

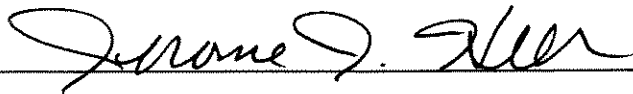
An Audit of Milwaukee County's Combined Court Related Operations

September 2006

Committee on Finance and Audit

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Milwaukee County Department of Audit



Jerome J. Heer, Director of Audits
Douglas C. Jenkins, Deputy Director of Audits

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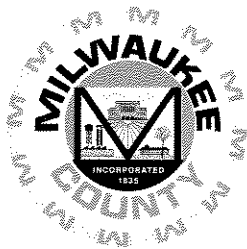
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Daryl R. Boyle
Narcisia A. Bland

Review Team

Amos Owens
Jere Trudeau

Administrative Support Team

Catherine M. Remiszewski
Cheryl A. Hosp
Karen J. Williams



Department of Audit

Milwaukee County

Jerome J. Heer
Douglas C. Jenkins

• Director of Audits
• Deputy Director of Audits

September 18, 2006

To the Honorable Chairman
of the Board of Supervisors
of the County of Milwaukee

We have completed an audit of Milwaukee County's Combined Court Related Operations. The report is in response to a November 2005 County Board Resolution [File No. 05-464] authorizing and directing an audit of Combined Court Related Operations efficiency. To facilitate this directive, the Department of Audit contracted with the National Center of State Courts to employ its national expertise in this area. The report highlights various conditions identified by the National Center for State Courts and its corresponding recommendations to help improve court efficiency, as well as, our independent analysis, observations, and recommendations.

The complete report from the National Center for State Courts is included as Appendix A. The response from the Chief Judge and the Clerk of Circuit Court is included as Exhibit 2. We wish to acknowledge the cooperation extended by the Chief Judge and her staff, the Circuit Court Judges and the staff of the Combined Court Related Operations.

Please refer this report to the Committee on Finance and Audit.

A handwritten signature in cursive script, reading "Jerome J. Heer".

Jerome J. Heer
Director of Audits

JJH/cah

Attachment

cc: Milwaukee County Board of Supervisors
Scott Walker Milwaukee County Executive
Kitty Brennan, Chief Judge
John Barrett, Clerk of Circuit Court
Linda Seemeyer, Director, Department of Administrative Services
Steven Agostini, Fiscal and Budget Administrator, DAS
Terrence Cooley, Chief of Staff, County Board Staff
Steve Cady, Fiscal and Budget Analyst, County Board Staff
Delores Hervey, Chief Committee Clerk, County Board Staff

An Audit of Milwaukee County’s Combined Court Related Operations

Table of Contents

Summary..... 1

Background..... 6

 Section 1: National Center for State Courts Findings 9

 Section 2: Milwaukee County Department of Audit Findings 16

Exhibit 1 – Audit Scope..... 22

Exhibit 2 – Response from the Chief Judge, First Judicial Branch, Milwaukee County and
 the Milwaukee County Clerk of Circuit Court..... 23

Appendix A – National Center for State Courts’ Milwaukee County Circuit Court Efficiency
 Study: Final Report and Recommendations..... 34

Summary

The Wisconsin court system was first established in 1848 when Wisconsin became a state. Over time county courts were created with various types of jurisdiction and overlapping authority.

In 1962 the court system was reorganized into a two-tiered trial system, with circuit courts and county courts. County courts had exclusive jurisdiction in probate, mental health, small claims and juvenile proceedings. At that time, the State paid the salaries and fringe benefits of circuit court judges and court reporters. The counties were required to pay all other salaries and expenses of the circuit courts. For county courts, the State and counties each paid 50% of the salary and fringe benefit costs of county judges, while the counties provided full funding for all other county court expenses. Since August 1978, the State has assumed the cost of salaries and fringe benefits for all circuit court judges, court reporters, and provide funding for guardian ad litem and the Circuit Court support payment. By State law, all other operational costs of the Circuit Court shall be paid by the County. This includes the salaries and fringe benefits of clerks of court, court commissioners, courtroom security, clerical staff, office supplies, law libraries, juries and other operating costs.

From 2002 to 2005, Milwaukee County's direct tax levy support for the courts increased from \$23.9 million to \$29.5 million, or about 24%. This increase of \$5.6 million is attributed to fringe benefit increases and bailiff cross charge increases. In 2006, this trend of increasing tax levy support ended with a budgeted decrease of \$1.8 million, or 6.2% from 2005 actual expenditures. During the same time period, the number of funded positions has decreased from a high of 338.4 in 2002 to a low of 280.7 in 2006, a difference of 57.7 positions, or 17.1%.

2006 Combined Court Related Operations

As part of his 2006 Recommended Budget, the County Executive recommended reducing the direct tax levy support for the Combined Court Related Operations by \$4.4 million. This was to be achieved primarily by abolishing 75 funded positions. Positions earmarked for abolishment included nine full-time court commissioners and 18 deputy clerks of court judicial assistants.

In response to the proposed budget, the Chief Judge announced that certain small claims hearings would not be set as there were no court commissioners to hear them. As a result, a compromise was reached and the County Board restored all 75 positions, but provided funding for just \$2.9 million of the County Executive's recommended \$4.4 million cut. It was recognized at the time that a shortfall would occur without additional State funding. The County Board also directed the

Department of Audit to conduct a review of the Combined Court Related Operations staffing. To facilitate that directive the Department of Audit contracted with the National Center of State Courts to employ its national expertise in this area.

National Center for State Courts Findings

The National Center for State Courts (NCSC) is a nationally recognized, non-profit organization that assists court leaders to better serve the public through original research, consulting services, publications, and national educational programs.

With the full support of the Chief Judge and Clerk of Circuit Court, the Department of Audit contracted with NCSC to review Milwaukee County court operations and to apply certain statistical measurements it has developed (CourTools) to determine the overall efficiency of the courts at current staffing levels. The resulting NCSC report is included, in its entirety, as **Appendix A**. Following are brief highlights from the NCSC report.

Overall NCSC Conclusion

Based on NCSC's review, there is no justification, based on workload or staff efficiency, for staffing reductions. According to the report,

The NCSC project team found no obvious large inefficiencies that represent waste of resources or that would significantly improve the Court's operational efficiency at little or no cost. Most of the recommendations will improve operational or organizational efficiency incrementally. Some recommendations require some investment in order to achieve an increase of efficiency. The Court is already conscious of budget issues and is continually reviewing its external face to the public and its internal processes to maintain good levels of service with available resources.

Strengths and Assets of the Court

Strengths identified in the NCSC report include:

- Circuit Court and Circuit Clerk leaders are knowledgeable and articulate about the challenges facing them, and their strategies in coping with them.
- Statistical performance measures indicate that the Court is keeping up with its workload and resolving cases in a timely way.
- The Court and other agencies that coordinate efforts with the Court, act in a collegial manner and routinely cooperate with each other in both daily operations and on-going problem-solving efforts.

In the same vein, the Court and other agencies have developed innovative practices to make the best use of limited resources available.

Milwaukee County Department of Audit Findings

Independent of the work performed by the National Center for State Courts (see **Appendix A**), we performed an analysis of disposed cases by each judge in each of the five court divisions (Felony, Misdemeanor/Traffic, Civil, Family and Children's) for the time period August 2004 through April 2006. While we are in general agreement with NCSC's overall conclusion that staffing cuts are not justified based on workload and efficiency of court operations, our independent review indicates there are opportunities to improve the productivity of certain court branches.

Variances in Case Disposition Rates

As we anticipated, the number of cases disposed varied from division to division, as the nature and complexity of the cases differs from one division to the next. However, we also noted the number of cases disposed varied within a division from judge to judge.

For instance, the number of cases disposed between the three judges assigned to the Homicide/Sexual Assault courts ranged from 187 to 317 during the one-year period August 2004 through July 2005. This represents, a 70% difference from the lowest judge to the highest. The difference is more dramatic in the nine-month period August 2005 through April 2006, with a range of 130 to 275 cases disposed, a difference of 112%.

Several factors may affect the relative efficiency with which cases are disposed, including the following:

- Each year in August, 25% of the judges are required by Wisconsin Circuit Court Rules to rotate into another court. This could reduce efficiency in the short run as judges experience a transition period between case types.
- The judge's general level of knowledge and experience, as well as that specific level of knowledge and experience related to the particular court assigned. A review of the seniority roster for judges on the bench during the time of our review showed a range in experience from one year to 30 years.
- Number of vacation days and other off time available to each judge varies.
- The number and duration of jury trials can vary from one judge to another. For instance, among judges in felony court, the number of jury trials ranged from nine to 20 during a 12-month period. During the same 12-month period, the number of jury trials anticipated by judges assigned to misdemeanor/traffic court ranged from six to 58.
- Individual preferences related to court policies and procedures. For example, as noted by NCSC, some judges prefer to issue pre-trial scheduling orders, while others do not.

- Court calendar scheduling practices. The issue of court calendars is addressed in detail in the following subsection of this report.

Courtroom Observations

During the course of our interviews, a statement was made that it was common knowledge that a very limited number of hearings are conducted from Wednesday through Friday afternoons in the Civil Division of the Circuit Courts. To determine the validity of this statement, we visited the various courtrooms located in the Safety Building, Court House Complex and the Criminal Justice Facility on various Wednesday, Thursday and Friday afternoons from March through June 2006. We also matched the courtroom activity observed to the scheduled calendars of each court. Based on a total of 526 observations, we noted that, overall, there were no hearings scheduled on 19.0% of the available court time on Wednesday afternoons; 24.1% on Thursday afternoons; and 45.5% on Friday afternoons. The assertion regarding the light schedule for civil court cases on Wednesday through Friday afternoons was borne out in our review, with no hearings scheduled 43.5% of the available court time on Wednesday afternoons; 53.5% on Thursday afternoons; and 64.7% on Friday afternoons. In contrast, misdemeanor/traffic court cases had no hearings scheduled just 2.2% of the available court time on Wednesday afternoons; 0% no hearings on Thursday afternoons; and 29.8% on Friday afternoons.

However, there are several factors that must be considered before reaching a conclusion that this data supports the need for improved efficiency.

For example, judges and clerks indicated that they use some of the time available from open court calendars to research legal opinions, review briefs, write orders and opinions, prepare for upcoming cases, as well as process and file court documents. To the extent that their work is conducted in chambers, actual time in Court may be more efficient.

Overall Department of Audit Conclusions

In preparation of this audit report, we conducted joint interviews of key stakeholders in Milwaukee County's Combined Court Related Operations. Based on the work conducted by NCSC, as well as our independent courtroom observations and analysis of case disposition rates and court schedule patterns, we make the following overall conclusions.

- We found no basis for justifying additional staffing cuts in the Combined Court Related Operations. The evidence suggests that significant additional staffing cuts will negatively impact the pace of court operations.

- While maintaining our position that additional staffing cuts are not justified, we believe the evidence suggests there are opportunities to improve the efficiency of some courts. Some specific strategies for improved efficiency are contained in recommendations of the National Center for Court Services. A renewed effort on the part of judges to collaborate in identifying and implementing best practices for swift disposition of cases may provide the greatest benefit at the least cost. It will take time to identify and implement judicial best practices. It will also require a willingness on the part of judges to embrace change and adopt techniques of their peers in pursuit of improved court efficiency.

Recommendations are included to address issues raised in this report, including 13 recommendations proposed by the National Center for State Courts. Management responses from the Chief Judge and Clerk of Circuit Court are included as **Exhibits 2** and **3**, respectively.

Background

Evolution of Wisconsin Court System

The Wisconsin court system was first established in 1848 when Wisconsin became a state. Over time county courts were created with various types of jurisdiction and overlapping authority. In addition, municipalities established police justice courts to enforce local ordinances.

In 1962 the court system was reorganized into a two-tiered trial system, with circuit courts and county courts. County courts had exclusive jurisdiction in probate, mental health, small claims and juvenile proceedings.

At that time, the State paid the salaries and fringe benefits of circuit court judges and court reporters. The counties were required to pay all other salaries and expenses of the circuit courts. For county courts, the State and counties each paid 50% of the salary and fringe benefit costs of county judges, while the counties provided full funding for all other county court expenses.

In 1977, the Legislature passed the Court Reorganization Act effective August 1, 1978. That law merged the circuit and county courts into one trial court system. As a result, existing circuit and county judges became judges in the circuit in which their chambers were located.

Since August 1978, the State has assumed the cost of salaries and fringe benefits for all circuit court judges and court reporters. By State law, Counties are responsible for operating costs, which include the salaries and fringe benefits of clerks of court, court commissioners, courtroom security, clerical staff, office supplies, law libraries, juries and other operating costs.

Combined Court Related Operations Budgets

Prior to the 2006 Milwaukee County Adopted Budget, direct tax levy support for court operations has steadily increased, as shown in **Table 1**.

Table 1
Milwaukee County Combined Court Related Operations
Total Expenditures and Sources of Revenue
2002—2006

	<u>2002</u>	<u>2003</u>	<u>2004</u>	<u>2005</u>	<u>2006</u>
Total Expenditures	\$34,694,353	\$37,029,360	\$38,354,931	\$39,969,770	\$37,816,325
State & Federal Revenue	6,876,891	6,979,614	3,745,661	6,435,369	6,142,495
Other Revenue	3,957,085	3,532,281	3,972,680	4,052,316	4,028,991
Direct Tax Levy	23,860,377	26,517,465	27,636,590	29,482,085	27,644,839
Indirect Tax Levy*	7,438,527	7,161,746	6,989,916	6,517,646	6,626,704
Total Tax Levy	\$31,298,904	\$33,679,211	\$34,626,506	\$35,999,731	\$34,271,543
% Increase Direct Tax Levy		11.1%	4.2%	6.7%	-6.2%

* These costs were included in other departmental and non-departmental budgets and allocated to the Combined Court Related Operations.

Source: Milwaukee County Adopted Budgets, 2002—2006. Figures for 2002—2005 are actual expenditures; 2005 and 2006 are budgeted expenditures.

From 2002 to 2005 the direct tax levy support increased \$5,621,708, or 23.6%. In 2006, this trend of increasing tax levy support ended with a budgeted decrease of \$1,837,246, or 6.2% from 2005 actual expenditures. The expenditures in **Table 1** are solely those of Milwaukee County and do not include State expenditures related to judges and court reporter salaries and fringe benefits.

During the same time period, the number of funded positions has decreased from a high of 338.4 in 2002 to a low of 280.7 in 2006, a difference of 57.7 positions, or 17.1%.

Composition of Combined Court Related Operations

Milwaukee County comprises the First Judicial Administrative District of the state court system and has 47 judges. A total of 64 court reporters are assigned to the judges to record and transcribe testimony in court proceedings. Administrative positions assigned to the district and funded by the State consist of a Chief Judge, a District Court Administrator, a Deputy District Court Administrator and a Managing Court Reporter. The circuit courts are divided into five divisions, as shown in **Table 2**.

Table 2
Wisconsin First Judicial Administrative District

<u>Division</u>	<u>Number of Judges</u>
Children's	8
Civil	12
Family	5
Felony	12
Misdemeanor/Traffic	10
Total	47

Source: First Judicial District Court roster.

In 2005, Milwaukee County funded a total of 288.5 positions through the Combined Court Related Operations budget. Twenty-two were court commissioners assigned to the five court divisions to assist with certain judicial duties. Although appointed by the Chief Judge, court commissioner positions are funded by Milwaukee County. According to Wisconsin State Statutes, the Clerk of Circuit Courts shall provide a sufficient number of deputy clerks for all the judges and branches of the court. In 2005, 83.5 positions were allocated to judges and court commissioners. The remaining 183 positions provided administrative and clerical support to the courts.

2006 Combined Court Related Operations

As part of his 2006 Recommended Budget, the County Executive recommended reducing the direct tax levy support for the Combined Court Related Operations by \$4.4 million. This was to be achieved primarily by abolishing 75 funded positions. Positions earmarked for abolishment included nine full-time court commissioners and 18 deputy clerks of court judicial assistants.

In response to the proposed budget, the Chief Judge announced that certain small claims hearings would not be set as there were no court commissioners to hear them. As a result, a compromise was reached and the County Board restored all 75 positions, but provided funding for just \$2.9 million of the County Executive's recommended \$4.4 million cut. It was recognized at the time that a shortfall would occur without additional State funding. The County Board also directed the Department of Audit to conduct a review of the Combined Court Related Operations staffing. To facilitate that directive the Department of Audit contracted with the National Center of State Courts to employ its national expertise in this area.

Section 1: National Center for State Courts Findings

For more than 30 years, NCSC has provided information on proven best practices for improving court operations in many areas.

The National Center for State Courts (NCSC) is a nationally recognized, non-profit organization that assists court leaders to better serve the public through original research, consulting services, publications, and national educational programs. For more than 30 years, NCSC has collected and interpreted data on court operations nationwide and has provided information on proven best practices for improving court operations in many areas.

NCSC Review of Milwaukee County Circuit Courts

With the full support of the Chief Judge and Clerk of Circuit Court, the Department of Audit contracted with NCSC to review Milwaukee County court operations and to apply certain statistical measurements it has developed (CourTools) to determine the overall efficiency of the courts at current staffing levels. The resulting NCSC report is included, in its entirety, as **Appendix A**. Following are brief highlights from the NCSC report.

NCSC's review concludes there is no justification, based on workload or staff efficiency, for staffing reductions.

Overall Conclusion

NCSC's review concludes that there is no justification, based on workload or staff efficiency, for implementing additional staffing reductions. According to the report,

The NCSC project team found no obvious large inefficiencies that represent waste of resources or that would significantly improve the Court's operational efficiency at little or no cost. Most of the recommendations will improve operational or organizational efficiency incrementally. Some recommendations require some investment in order to achieve an increase of efficiency. The Court is already conscious of budget issues and is continually reviewing its external face to the public and its internal processes to maintain good levels of service with available resources.

Strengths and Assets of the Court

Strengths identified in the NCSC report include:

- Circuit Court and Circuit Clerk leaders are knowledgeable and articulate about the challenges facing them, and their strategies in coping with them.
- Statistical performance measures indicate that the Court is keeping up with its workload and resolving cases in a timely way.
- The Court and other agencies that coordinate efforts with the Court, act in a collegial manner and routinely cooperate with each other in both daily operations and on-going problem-solving efforts.
- In the same vein, the Court and other agencies have developed innovative practices to make the best use of limited resources available.

Conclusions from Statistical Analyses

The National Center for State Courts has developed several performance measures called ‘CourTools.’ NCSC designed CourTools to “support efforts toward improved court performance by helping: 1) clarify performance goals, 2) develop a measurement plan, and 3) document success” in the judiciary. We requested that NCSC use several specific CourTools to measure performance of the Milwaukee County Circuit Court. We mutually agreed upon five measures for NCSC’s review:

We mutually agreed upon five measures for NCSC’s review.

- CourTools Measure 2 – Clearance Rate
- CourTools Measure 3 – Time to Disposition
- CourTools Measure 4 – Age of Active Pending Caseload
- CourTools Measure 5 – Trial Date Certainty
- CourTools Measure 10 – Cost Per Case

The following explanations and conclusions are excerpted from the NCSC report. See **Appendix A** for complete details.

For the three years reviewed, the clearance rate for Milwaukee County Circuit Courts hovers around 100%.

- **CourTools Measure 2 – Clearance Rate.** This performance measure is defined as the number of outgoing cases as a percentage of incoming cases, that is, whether the court is keeping up with its incoming caseload. For all three years, the clearance rate for Milwaukee County Circuit Courts hovers around 100%, with some case types in some years slightly higher than 100 percent and in other years slightly lower. When three years of clearance rates in a case type are averaged, such as Misdemeanor/Traffic with values of 97 percent, 99 percent, and 103 percent, the result is a number close to 100 percent. While there is minor fluctuation from year to year, the trend in the Milwaukee data is equilibrium over the three years. No backlog is developing in any case type.

When analyzing clearance rates, there are at least two warning signs to look for. One warning sign is large fluctuations from year to year, indicating considerable change in caseload or in resources applied to disposing cases. Another warning sign is a trend toward decreasing clearance rates from one year to the next without a bounce-back of catching up, indicating buildup of a backlog. The Milwaukee data does not show a sign of either warning sign for 2003-2005.

- **CourTools Measure 3 – Time to Disposition.** This performance measure is defined as the percentage of cases disposed or otherwise resolved within established time frames. The first element is time to disposition, a calculation of the length of elapsed time from case filing to case resolution. For cases disposed in 2005, for example, the date of filing is subtracted to determine the time to disposition. The second element is local, state, or national guidelines as a case-processing time standard. The measure takes into account periods of inactivity beyond court control (e.g., absconded defendants, cases suspended pending decision on an appeal or in bankruptcy) and provides a framework for meaningful measurement across all case types.

The Milwaukee County data for time to disposition shows considerable variation among case types and court divisions.

The Milwaukee County data for time to disposition shows considerable variation among case types and court divisions, and smaller variations from year to year within a case type. Among divisions of the court, the Civil Division disposes of cases closest to the standards, between 74 percent and 98 percent for four civil case types.

Within case type, fluctuation from year to year ranges from a 1 percent shortening of time to disposition in misdemeanor cases, to a 22 percent lengthening of time to disposition in paternity cases. The average change is a 3 percent lengthening, and the median change is a 1 percent lengthening. The three case types to watch because times

to disposition increasing are paternity (22 percent), criminal traffic (15 percent), and felony (8 percent). Other case types may or may not meet time standards, but their times to disposition are generally increasing by only a few percentage points per year – the trend is not moving in the right direction, but generally disposition times are not lengthening rapidly.

CourTools Measure 2, Clearance Rate, shows that there is no backlog developing in any of the case types in 2003-2005, so other factors are affecting the time to disposition such as available dedicated resources, i.e. staffing, mix of more complex cases, or the lag time it takes for judges to become acclimated to a new case type due to judge rotation.

- **CourTools Measure 4 – Age of Active Pending Caseload.** This performance measure is defined as the age of active cases that are pending before the court, measured as the number of days from filing until the time of measurement. This pool of active cases requires court action. Examining the age of pending cases draws attention to the number and types of cases drawing near the court's case processing time standards. Once the age spectrum of cases is determined, the court can focus attention on what is required to ensure cases are brought to completion within reasonable timeframes.

It is possible for a court to show expeditious processing of disposed cases, yet have undesirably high figures for the age of its pending caseload. This happens when routine cases move smoothly through the court system while problematic cases are allowed to continue aging. Moreover, an increase in the age of pending cases foreshadows difficulties a court might have in continuing its past degree of expeditiousness. Measure 4 Age of Active Caseload asks, "What percentage of our cases exceed our time standards?"

The data show that, by case type, the median age of the pending caseload is decreasing.

The data show that, by case type, the median age of the pending caseload is decreasing, specifically misdemeanor, contested traffic, small claims, divorce, paternity, juvenile delinquency, and juvenile-other. This is encouraging, but there are a number of stagnant cases in every case type. There may be legitimate reasons for a few cases to take a longer time to resolve, such as unavailability of DNA results, but a number of management approaches are available to managers to identify the problem cases and address the underlying issues.

- **CourTools Measure 5 – Trial Date Certainty.** Trial Date Certainty, CourTools performance measure 5, is defined as the number of times that cases disposed by trial are

scheduled for trial. A court's ability to hold trials on the first date they are scheduled to be heard (trial date certainty) is closely associated with timely case disposition. This measure provides a tool to evaluate the effectiveness of calendaring and continuance (adjournment) practices. For this measure, "trials" includes jury trials, bench trials (also known as non-jury trials or court trials), and adjudicatory hearings in juvenile cases.

The average trial date settings per case must be looked at in conjunction with other court performance indicators. If continuances are granted, are they granted for good cause, and are they granted prior to trial dates in order for the parties to settle, or are they granted after a trial date has been set? If the court is disposing cases according to American Bar Association standards, one can expect that continuances are granted expeditiously to ensure good court performance with quality results.

The court's trial date certainty overall should be considered pretty good.

The court's trial date certainty overall should be considered pretty good. In civil, juvenile, family, and probate cases, at least 85 percent of the cases are disposed by trial at the initial setting or with only one reset. Slightly less successful are felony and misdemeanor cases, although at least two-thirds of the cases are disposed by trial at the initial setting or with only one reset. The court, by establishing a pattern of credible trial dates through a firm and consistent policy to limit the number of trial day continuances, has broken the cycle of allowing lawyers not to be ready for trial and extending trial dates unreasonably into the future.

Monitoring cost per case, from year to year, provides a practical means to evaluate existing case processing practices and to improve court operations.

- **CourTools Measure 10 – Cost Per Case.** This performance measure assesses the cost of processing a single case, by case type. Monitoring cost per case, from year to year, provides a practical means to evaluate existing case processing practices and to improve court operations. Cost per case forges a direct connection between how much is spent and what is accomplished. This measure can be used to assess return on investment in new technologies, reengineering of business practices, staff training, or the adoption of "best practices." It also helps determine where court operations may be slack, including inefficient procedures or underutilized staff.

[Note: NCSC's analysis shows Milwaukee County's cost per case in 2005 ranged from \$137 for misdemeanor/traffic cases to \$1,523 for felony cases.] Over time the costs per case may increase or decrease as court processes are changed to meet management goals, as technology is acquired, and as programs to serve litigants are included. Measuring cost per case will provide some evidence of the financial consequences of such changes.

NCSC Recommendations

Following are the recommendations contained in the NCSC report. Details of the conditions noted, as well as implementation issues and potential cost implications, are included in the full report (see **Appendix A**).

1. *Streamline the process of re-filling a position that has already been approved and filled but vacated within the new hire's probationary period.*
2. *Continue the current policy of assigning courtroom clerks to individual judges, not moving toward pooling. Every judge has a distinct work style and approach to operating their courtroom, and there is no single or "correct" way to do it; a courtroom clerk who learns a judge's style of operating is more efficient and maintains a flow of activity in the courtroom, compared to a clerk who would be occasionally assigned to a particular judge.*
3. *Develop a Court staffing model with which to determine staffing needs. Staffing is currently determined by previously allotted FTE positions and the immediate needs of the Court to satisfy a current workload or work process issue. The development of an optimum staffing model would better define the Court's current staffing issues and promote tactical as well as long-range planning.*
4. *Authorize judges and staff in Family Division to access CCAP for Children's Division cases, and vice versa. This will increase communication between the divisions, reduce overlaps,*
5. *Urge the State to develop and implement previously proposed changes to the CCAP Jury Module. The design committee needs to meet and identify the functional improvements for the jury module in order for reprogramming to occur, and the state needs to fund the enhancements.*
6. *Expand the availability and use of videoconferencing to enhance public safety and reduce the cost of transporting defendants to court. Use of the attorney/client video visiting room on the third floor of the Safety Building should be promoted to attorneys to increase usage.*
7. *The Sheriff's Department and District Prosecuting Attorney should diligently pursue access to the state Department of Justice Wilenet (the Wisconsin Law Enforcement Network www.wilenet.org) to help them obtain up-to-date information on the location of inmates in the state's penal institutions, to facilitate economical transport logistics.*

The Court, the State Public Defender's office, and registered private attorneys should also have direct, or indirect but readily available, access to this information to facilitate locating defendants and facilitate communications with defendants.

- 8. Expand pro se assistance to unrepresented litigants. This will provide better customer service for pro se litigants, and use less courtroom time currently required to meet the needs of pro se litigants.*
- 9. Provide better public information on how to get to Children's Court in flyers and on website.*
- 10. Uniformly enforce court policy that all judges must use a pretrial scheduling order to ensure that cases are progressing toward resolution.*
- 11. Consider creating a re-incarceration hearing docket to focus the Court's attention on this type of hearing and help ensure their prompt disposition.*
- 12. The Children's Division should consider eliminating service implementation hearings in order to speed up the court process and save valuable court time. Communication about services provided to the child occurs at the family site meeting, and orders are not generated as a result of the service implementation hearings.*
- 13. The Court should continue to aggressively develop a long-range court technology plan, especially in the use of technology in courtrooms, and involve the bar in such planning.*

Section 2: Milwaukee County Department of Audit Findings

Independent of the work performed by the National Center for State Courts (see **Appendix A**), we performed an analysis of disposed cases by each judge in each of the five court divisions (Felony, Misdemeanor/Traffic, Civil, Family and Children's) for the time period August 2004 through April 2006. While we are in general agreement with NCSC's overall conclusion that significant staffing cuts are not justified based on workload and efficiency of court operations, our independent review indicates there are opportunities to improve the productivity of certain court branches.

Variances in Case Disposition Rates

The number of cases disposed varied within a division from judge to judge.

As we anticipated, the number of cases disposed varied from division to division, as the nature and complexity of the cases differs from one division to the next. However, we also noted the number of cases disposed varied within a division from judge to judge. **Table 3** presents the range in number of cases disposed by judges in each court within the five divisions comprising the First Judicial Administrative District (Milwaukee County). For those court divisions that are subdivided into specialty courts, the ranges are presented for each specialty classification. For example, within the Felony Division, 12 courts are divided into four specialty classifications: Drug (3); Gun (1); Homicide/Sexual Assault (3); and General (5).

Table 3
Range of Cases Disposed
By Division and Specialty Case Type
August 2004—April 2006

		August 2004—July 2005			August 2005—April 2006		
<u>Court Division</u>	<u>Specialty</u>	<u>Cases Disposed</u>		<u>Percent Difference</u>	<u>Cases Disposed</u>		<u>Percent Difference</u>
		<u>Low</u>	<u>High</u>		<u>Low</u>	<u>High</u>	
Felony	Drug	642	740	15%	602	735	22%
	General	448	577	29%	348	542	56%
	Homicide/Sexual Assault	187	317	70%	130	275	112%
Misdemeanor/ Traffic	Domestic Violence	899	1,170	30%	805	838	4%
	General	1,004	1,676	67%	1,329	1,539	16%
Civil	Probate	1,042	1,095	5%	883	928	5%
	General	1,029	1,276	24%	817	1,090	33%
Family	General	1,046	1,261	21%	712	895	26%
Children's	General	752	863	15%	456	711	56%

Source: Wisconsin Consolidated Court Automation Programs (CCAP) data.

The number of cases disposed between three judges assigned to the Homicide/Sexual Assault courts ranged from 187 to 317 during a one-year period.

As shown in **Table 3**, the number of cases disposed between the three judges assigned to the Homicide/Sexual Assault courts ranged from 187 to 317 during the one-year period August 2004 through July 2005. This represents a 70% difference from the lowest judge to the highest. The difference is more dramatic in the nine-month period August 2005 through April 2006, with a range of 130 to 275 cases disposed, a difference of 112%.

NCSC noted very positive overall achievement levels in the measures of case processing. Factors that may affect the relative efficiency with which cases are disposed by individual judges include the following:

- Each year in August, 25% of the judges are required by Wisconsin Circuit Court Rules to rotate into another court. This could reduce efficiency in the short run as judges experience a transition period between case types.

- The judge's general level of knowledge and experience, as well as that specific level of knowledge and experience related to the particular court assigned. A review of the seniority roster for judges on the bench during the time of our review showed a range in experience from one year to 30 years.
- Random assignment of cases and the potential for judges to draw large, complex, lengthy trials.
- Number of vacation days available to each judge. While all judges, regardless of service time, are entitled to five weeks' vacation, judges are permitted by court rules to carry over up to 25 days' vacation time. Thus, individual judges may begin a calendar year with anywhere between five and ten weeks of vacation time. In addition, judges are permitted an additional 10 days off for education or teaching in-state, with additional time off at the discretion of the Chief Judge for education or teaching out-of-state. Additional time off is permitted for judges to participate on judicial state-wide committees.
- The number and duration of jury trials can vary from one judge to another. For instance, among judges in felony court, the number of jury trials ranged from nine to 20 during a 12-month period. During the same 12-month period, the number of jury trials conducted by judges assigned to misdemeanor/traffic court ranged from six to 58.
- Individual preferences related to court policies and procedures. For example, as noted by NCSC, some judges prefer to issue pre-trial scheduling orders, while others do not.
- Court calendar scheduling practices. The issue of court calendars is addressed in detail in the following subsection of this report.

We visited courtrooms located in the Safety Building, Courthouse Complex and the Criminal Justice Facility on various Wednesday, Thursday and Friday afternoons.

Courtroom Observations

During the course of our interviews, a statement was made that it was common knowledge that a very limited number of hearings are conducted from Wednesday through Friday afternoons in the Civil Division of the Circuit Courts. To determine the validity of this statement, we visited courtrooms located in the Safety Building, Courthouse Complex and the Criminal Justice Facility on various Wednesday, Thursday and Friday afternoons from March through June 2006. We also

matched the courtroom activity observed to the scheduled calendars of each court. Based on a total of 526 observations, we noted that, overall, there were no hearings scheduled 19.0% of the available court time on Wednesday afternoons; 24.1% on Thursday afternoons; and 45.5% on Friday afternoons. **Table 4** summarizes our observations by court division.

Table 4
Court Calendars
Percent of Afternoons Courts not in Session
By Division and Day of the Week

<u>Division</u>	<u>Wednesdays</u>	<u>Thursdays</u>	<u>Fridays</u>
Civil	43.5	53.5	64.7
Family	21.1	14.3	65.6
Felony	10.4	17.0	31.1
Misdemeanor/Traffic	2.2	0.0	29.8
Weighted Average	19.0	24.1	45.5

Source: Department of Audit, based on 526 observations during March, April, May and June 2006. Observations: Wednesday (158), Thursday (137), Friday (231).

As the data in **Table 4** shows, the assertion regarding the light schedule for civil court cases on Wednesday through Friday afternoons was borne out in our review, with no hearings scheduled 43.5% of the available court time on Wednesday afternoons; 53.5% on Thursday afternoons; and 64.7% on Friday afternoons. In contrast, misdemeanor/traffic court cases had no hearings scheduled just 2.2% of the available court time on Wednesday afternoons; 0% no hearings on Thursday afternoons; and 29.8% on Friday afternoons.

Viewing the same data by the day of observation, a distinct pattern of a light court calendar on Friday afternoons emerges. During our three-month observation period, the overall percentage of open afternoon court calendars increased from 19.0% on Wednesdays, to 24.1% on Thursdays, to 45.5% on Fridays. However, there are several factors that must be

considered before reaching a conclusion that this data supports the need for improved efficiency.

For example, judges and clerks indicated that they use some of the time available from open court calendars to research legal opinions, review briefs, write orders and opinions, prepare for upcoming cases, as well as process and file court documents. To the extent that this work is conducted in chambers, actual time in Court may be more efficient.

Furthermore, we reviewed attendance records of current court clerks and found that in about half of the open court calendar dates we observed on Friday afternoons, earned vacation or other paid time off was utilized, thus effectively reducing the impact of open court dates on staff productivity.

Overall Department of Audit Conclusions

In preparation of this audit report, we conducted joint interviews of key stakeholders in Milwaukee County's Combined Court Related Operations. Based on the work conducted by NCSC, as well as our independent courtroom observations and analysis of case disposition rates and court schedule patterns, we make the following overall conclusions.

We found no basis for staffing cuts in the Combined Court Related Operations.

A renewed effort on the part of judges to collaborate in identifying and implementing best practices for swift disposition of cases may provide the greatest benefit at the least cost.

- We found no basis for justifying staffing cuts in the Combined Court Related Operations. The evidence suggests that significant additional staffing cuts will negatively impact the pace of court operations.
- While maintaining our position that staffing cuts are not justified, we believe the evidence suggests there are opportunities to improve the efficiency of some courts. Some specific strategies for improved efficiency are contained in recommendations of the National Center for Court Services. A renewed effort on the part of judges to collaborate in identifying and implementing best practices for swift disposition of cases may provide the greatest benefit at the least cost. It will take time to identify and implement judicial best practices. It will also require a willingness on the part of judges to embrace change and adopt techniques of their peers in pursuit of improved court efficiency.

Based on these conclusions, we recommend the Chief Judge:

14. *Facilitate an internal review of judicial best practices designed to identify and address opportunities to improve overall courtroom efficiency.*

Audit Scope

The objective of this audit was to review the efficiency of Milwaukee County's Combined Court Related Operations with particular emphasis on the ability of the court system to sustain significant additional staffing reductions from current levels.

The audit was conducted under standards set forth in the United States Government Accountability Office *Government Auditing Standards (2003 Revision)*, with the exception of the standard related to periodic peer review. Limited resources have resulted in a temporary postponement of the Milwaukee County Department of Audit's procurement of a peer review within the required three-year cycle. However, because the department's internal policies and procedures are established in accordance with Government Auditing Standards, and because this audit was performed in compliance with those policies and procedures, the absence of a peer review did not affect the results of this audit.

We limited our review to the areas specified in this Scope Section. During the course of the audit, we:

- Along with NCSC staff, conducted interviews with the Chief Judge, District Court Administrator, Clerk of Circuit Court, Chief Deputy Clerk of Court, the presiding judge of each Circuit Court Division, various Court Commissioners, various court and Clerk of Court staff and represents of the American Bar Association, State Public Defender, Wisconsin Department of Probation & Parole, District Attorney, and Managing Court Reporter.
- Reviewed Milwaukee County Adopted Budgets for the five-year period 2002--2006 related to Milwaukee County's Combined Court Related Operations.
- Calculated and compared the number of cases disposed by each judge within their assigned division.
- Reviewed court calendars to determine the percentage of times no cases were scheduled on Wednesday, Thursday and Friday afternoons.
- Visited courtrooms to determine whether court was in session on Wednesday, Thursday and Friday afternoons.
- Reviewed various court studies.
- Reviewed court cases related to each division to determine the number of times jury or court trials were rescheduled.

**The Combined Courts' Response
To Milwaukee County's Audit of
Court Related Operations**

to

Milwaukee County Board of Supervisors
Committee on Finance and Audit

Richard D. Nyklewicz, Jr., Chairman

Ryan P. McCue, Vice-Chairman

Elizabeth M. Coggs-Jones

Michael Mayo, Sr.

Willie Johnson, Jr.

Gerry P. Broderick

Peggy West

And

Milwaukee County Department of Audit

Jerome J. Heer, Director of Audits

Douglas C. Jenkins, Deputy Director of Audits

James D. Felde, CPA, CFE

September 11, 2006

TABLE OF CONTENTS

A. <u>Response Summary</u>	3
1. <u>NCSC Findings and Conclusions</u>	
2. <u>Milwaukee County Audit Department Findings and Conclusions</u>	
3. <u>The NCSC and Audit Department Recommendations</u>	
B. <u>Observation Response-Dispositional Rates</u>	4
1. <u>Summary Response</u>	
2. <u>Factors That Influence Disposition Rates</u>	
3. <u>The Combined Courts Efforts at Improvements</u>	
C. <u>Observation Response-Hearings vs. Desk Time</u>	5
1. <u>Summary Response</u>	
2. <u>A Judge's Job Includes Deskwork</u>	
D. <u>Recommendation Responses</u>	
#1.....	7
#2.....	7
#3.....	7
#4.....	7
#5.....	8
#6.....	8
#7.....	8
#8.....	9
#9.....	9
#10.....	9
#11.....	9
#12.....	10
#13.....	10
#14.....	10
E. <u>Summary</u>	11

A. Response Summary

1. The NCSC Findings and Conclusions

The Combined Courts welcomes all of the NCSC's Findings and Conclusions and in particular the following:

- *The Courts staff should not be cut*
- *Statistical performance measures indicate that the Court is keeping up with its workload and resolving cases in a timely way.*
- *The Court is already maintaining good levels of service with available resources*
- *The Court and other agencies have developed innovative practices to make the best use of limited resources available.*
- *The Circuit Court and Circuit Clerk leaders are knowledgeable and articulate about the challenges facing them, and their strategies in coping with them.*
- *The Court and other agencies that coordinate efforts with the Court, act in a collegial manner and routinely cooperate with each other in both daily operations and on-going problem-solving efforts.*
- *There are no obvious large inefficiencies*
- *The Court is already conscious of budget issues*

2. The Milwaukee County Department of Audits Findings and Conclusions

The Combined Courts welcomes the Department of Audit Findings and Conclusions as follows:

- *We are in general agreement with the NCSC's overall conclusion that staffing cuts are not justified based on workload and efficiency of court operations.*
- *There is no basis for justifying additional staffing cuts in the Combined Court*
- *Additional staffing cuts will negatively impact the pace of court operations.*

3. The NCSC and Department of Audit Recommendations

The Combined Courts has no objection to any of the NSCS or County Dept. of Audit recommendations. Most are initiatives the Combined Courts was trying to achieve already. Most need County Government's support. We welcome County Government's help in achieving them.

B. Observation Response- Dispositional Rates

1. Summary Response

The Combined Courts generally agrees with the observations of the County Auditors as to variations in Case Disposition Rates. They are unavoidable, have been minimized as much as possible and do not generally reflect any significant impediment to the overall productivity and efficiency of the courts. The County Auditors have been fair in pointing out a number of factors that influence Case Disposition Rates, including, the random assignment of cases, the differing complexity of cases, the different backgrounds of judges and the effect of judicial rotation on disposition. Below, the Combined Courts points out additional factors that influence case disposition rates. But the most telling conclusion is that the NCSC, the national experts hired by the Milwaukee County Audit Department, have found that despite the differences in judges' individual disposition rates, the Combined Courts have a 100% clearance rate on cases. The Courts gets the work done in a timely and efficient way despite the individual differences in court disposition rates.

2. Factors that Influence Dispositional Rates

There are variances in individual courts' disposition rates and there will always be variances because there are many factors and many courtroom participants that lead to a case's resolution.

- Cases are randomly assigned to judges. One judge may draw a complex case and another, a rather routine one. Complex cases take far longer to get to disposition than routine ones.
- One defense attorney may demand a jury trial and another not. Jury trials can take 2 days or 2 weeks, effecting disposition rates.
- One trial may have 50 witnesses and another may have only one.
- One Assistant District Attorney may file 25 counts on one case complaint and another Assistant District Attorney may only file a single count. Each additional count lengthens a trial and thereby affects disposition rates.
- One defense attorney may file 5 evidentiary motions and another may file none. Evidentiary motions require witnesses and may take many hours, even days to be heard. The trial cannot be heard until each motion is resolved.
- On one case the state prison system may fail to produce a defendant from the prison for trial causing an adjournment and delay in resolution of the case.
- An out-of-custody defendant may fail to appear in court for his trial and be in warrant status for 6 months causing a delay in the disposition of the case. In the usual case, the Sheriff's Department does not look for defendants in warrant status, citing their own budget constraints. Therefore, only when the defendant is rearrested is he/she brought back to court on his case in warrant status.
- Wisconsin law permits attorneys to substitute on a judge. That case then must be reassigned to another judge in the same division. Some judges get more cases

therefore, while the substituted-on judge gets fewer, which affects both court's disposition rates.

- And one judge may have more experience in criminal cases and another judge may have more experience in civil cases.
- Last, but certainly not least, judges must provide JUSTICE in each case. The courts procedures are controlled by the U.S. and Wisconsin Constitution and 200 years of case law and statutes. Quick case disposition is not our primary focus. By oath and ethics, our first obligation is to see to it that the law of this country is followed and all procedures that the parties to the lawsuit are entitled to are held and heard fairly. Sometimes efficiency must be sacrificed to provide Justice to litigants.

All of the above factors affect the rate within which a case gets disposed of.

3. The Combined Courts Efforts at Improvements

We in the Combined Courts' Operation agree that there are always opportunities to improve the productivity of certain court branches. We have done that and will continue to work on developing best practices to make each court as efficient as possible. Our judges meet monthly within the division and annually for a full day to address the issues of justice and best court practices. The judges all attend statewide judicial education and training of at least 10 hours where these issues are addressed. Many of our Milwaukee judges teach best practices to other judges in the state and the U.S. We have established Local Rules that address best practices. But it is important to point out that judges are required to provide Justice, first and foremost. Efficiency is also a goal, but secondary to Justice. Given that Justice is our first obligation, it is particularly noteworthy that we are nonetheless, highly efficient. As noted by NCSC, the national experts, the Milwaukee courts are resolving cases in a timely way. We have a 100% clearance rate. It is a very large court system and the dispositional rate differences even out over all, so that as a system, we clear 100% of cases filed each year.

C. Observational Response – Hearings v. Desk Time

1. Summary Response

The County auditors reported observations of court calendars on Wednesday, Thursday and Friday afternoons. It is important to note that these were observations of whether there were hearings scheduled. These were not observations of whether the courts staff and judge were present. The auditors reported that on Friday afternoons many courts in all divisions had no calendared hearings. And in the civil and family divisions, they reported that on some Wednesday and Thursday afternoons there were no hearings calendared. None of this is surprising and none of it indicates any lack of productivity

on the part of the courts. In fact, the Friday afternoon lack of hearings is intentional and necessary to allow the court staff and judge to get their work done.

A court can be efficient and productive only if it gets *all* of its work done. It does no good to have the jury trial and find the defendant guilty if the clerk doesn't have time to do the paperwork to communicate the result to the jail, the probation department, the state prison, the file and the computer record. It does no good to have the motions filed in a civil case unless the judge has time to read all of them and the cases necessary to the decision and time to write the judge's decision.

2. A judge's job includes Deskwork

It is part of the judge's job to read briefs, research the law and write decisions. Judges have to have time to do the deskwork part of their job. Judges must have time to prepare for cases that are scheduled for the calendar. For example, judges need to read all the papers filed and review the law on the issues that will be presented at the hearing. Additionally, judges have no secretaries or judicial assistants. They need time to answer correspondence and phone calls. All of that is part of the job.

So each judge has to build in time to get the deskwork part of the job done. Judges fit that in when they can. Most courts do that work on Friday afternoons. Sometimes, especially in the civil and family divisions, it takes more time than just Friday afternoon. By scheduling for it then, there's the minimum strain on the other parts of the court system. As noted by the County auditors, the Friday afternoon deskwork scheduling allows the clerks to use their time-off on Friday afternoons, without the need or expense of a replacement. It allows the deputy sheriffs to be off then too. Now, not every court can schedule deskwork time on Friday afternoons. Some courts have trials, probation reviews, or other calendar matters. But those courts have to find some other time to do the deskwork. It all has to be done.

Finally, it is important to stress that while the County auditors have made this observation, they did not conclude that the absence of hearings on these afternoons results in inefficiency. In fact they could not draw such a conclusion, because it is not so. There is no data to suggest that fewer hearings on Friday afternoon, for example, results in less efficiency. In fact, the contrary conclusion is true. The courts are *more* efficient when giving themselves time to get all of their work done. The proof of that statement is found in the audit's conclusion that the courts are highly efficient and have a 100% clearance rate on cases.

D. Recommendation Responses

1. Refilling Approved Positions

Response: Currently this recommendation cannot be unilaterally implemented by the Clerk of Circuit Court. This is a process that requires the approval of the Department of Administrative Services. A request signed by the Chief Judge and the Clerk of Circuit Court has been submitted to DAS. Although we agree with the general tone of the analysis and recommendation, it does not address a more fundamental aspect of the human resources issue. We believe that the courts' hiring process should be removed from the control of DAS and DHR. As a separate branch of government, the courts should have independent control over its hiring practices and decisions.

2. Assigned vs. Pooled Courtroom Clerks

Response: We agree with the analysis and recommendation, which is basically to maintain the status quo. We should note that our current system does have a "pool" component. We continually monitor and assess the workloads and calendars of the courts so that we know where resources should be directed at any given time. We then provide regularly unassigned or temporarily unassigned deputy clerks to courts that are in session and need a clerk to operate efficiently. Adequate staffing to meet the needs of the courtrooms is crucial and another reason that the courts should have the ability to control its personnel decisions.

3. Staffing model

Response: A work group has been established to review the Minnesota model and move forward in developing a staffing model that defines staffing issues. This recommendation further emphasizes the need for the courts to have its own independent human resources operation. The development of an optimum staffing model could then be a meaningful guide for future personnel decisions.

4. Family Court CCAP Access to Children's Court Cases

Response: We agree with this recommendation and have already implemented it. Family and Children's court judges, commissioners and deputy clerks now have CCAP access to both Family and Children's division cases. The Chief Judge has emphasized the importance of better communication between the two divisions. The Clerk of Circuit Court is examining the expansion of the scanning of orders from both divisions to enhance the court record that is available on CCAP. The Clerk's office now arranges for the delivery of court files between the divisions as needed. Creating a position with the responsibility to investigate Family and

Children's Court cases to determine if there are related cases in the other divisions would improve the system. Further, the Chief Judge has been examining greater coordination to enhance communication between divisions and possible unification prior to the release of this recommendation. There is a critical need for addressing the needs of children and families that is not contradictory or separated by geographical distance. These needs would best be addressed by relocating the Children's Court downtown.

5. **CCAP Jury Module**

Response: We agree with this recommendation. The Milwaukee Combined Courts does not have authority to order CCAP to effectuate the changes we would like to see. But the Clerk of Circuit Court and the Chief Judge have already been working with the state courts office to get the changes to CCAP that would improve our ability to get representative jurors. We will continue to work with CCAP to implement improvements in the jury module. Our jury management communicates our concerns to CCAP on a regular basis. The jury manager is a member of the Design Committee which was recently reconvened. Our needs differ from other counties because of our size and this has been an obstacle in working through the design committee.

6. **Videoconferencing Capability**

Response: We agree with this recommendation. We need better infrastructure, financial resources and cooperation to expand the availability of videoconferencing. The Chief Judge has requested that IMSD update the existing telephone (ISDN) lines utilized by videoconferencing to computer-based communications (IP). We will contact the state public defender promoting the use of the attorney/client visiting room. We also need to promote it generally so that the courts and other participants recognize its value for the system. We have unsuccessfully repeatedly asked the county for funding for an AV technician. We will continue to do so. Last, the Chief Judge will request the purchase of additional machines for the criminal courts and a position of AV technician.

7. **Access to Inmate Location Information**

Response: We agree with this recommendation. We will continue to suggest that the Sheriff and District Attorney pursue access to the state Department of Justice Wilenet (Wisconsin Law Enforcement Network) to locate inmates.

8. Pro Se Assistance

Response: We are in absolute agreement with this recommendation. The courts and the Clerk of Circuit Court have been working on this prior to the audit. The number of litigants without lawyers is steadily increasing. We recognize the special challenges presented by pro se litigants to the courts and support staff. Without assistance, the litigants without lawyers impede court efficiency because their cases take much more time to handle. We recognize the challenges that the court system presents to the non-lawyer, as well. The public has a right to access to their courts. So, the Chief Judge has been actively promoting services to pro se litigants prior to the release of this recommendation. These services include not only the Clinics located at the Courthouse, but also the Self-Representation section on the State Courts' website. Currently, the Family Self-Help Clinic is available on Monday through Wednesday from 11:30a.m. to 1:00p.m. and on Friday from 8:00a.m. to 9:30a.m. The Small Claims Self-Help Clinic is available on Thursday from 11:30a.m. to 1:00p.m. As great as this program is, one hour and one half on 4 days a week is not nearly enough help for the many self-represented litigants. Clearly, there is a need for expanded hours, better facilities and dedicated personnel. Unfortunately, the existing space is insufficient to meet current needs, much less any expansion of services. A position should be created to coordinate the recruitment and training of volunteers, provide assistance to the public and develop informational materials.

9. Public Information on Transportation to Children's Court

Response: We agree with this recommendation. The Clerk of Circuit Court will develop a flyer with instructions and directions. We will also include this information on our website.

10. Scheduling Orders

Response: We agree with this recommendation. The Combined Courts has recognized the advantage of Scheduling Orders and has mandated them in the Local Rules for years. The Chief Judge will be meeting with each division regarding the enforcement of pretrial scheduling orders.

11. Re-incarceration Docket

Response: We are not opposed to this recommendation and the Chief Judge will consider the creation of a re-incarceration docket. However, given the minimal resources in the court system, the implementation of this recommendation would only come at the expense of an existing part of the system.

12. Service Implementation Hearings

Response: The Chief Judge and the presiding Judge of the CCC are examining the use of SIH (Service Implementation Hearings). These hearings were developed to improve the efficiency and benefit of CHIPS hearings. The hearings were to insure that services were in place in order that subsequent court hearing were not wasted. But they require cooperation from many agencies and the District Attorney and Public Defender. Given everyone's budget constraints, they need to be reevaluated. Newer procedures are being implemented that require cooperation of the District Attorney. This procedure will be evaluated over the next six months.

13. Court Technology Strategic Planning

Response: We agree with this recommendation. Courtroom sound systems need to be modernized throughout the courthouse complex. In some courts the public and the court reporters cannot adequately hear. We have unsuccessfully, repeatedly requested improvements to the sound system. We have an inadequate number of faxes, copiers and video equipment. We have proposed installing WIFI in the courts so that the District Attorney and other lawyers have ready access to their offices and information that can help move cases forward more expeditiously. As of this date, the County and CCAP have not agreed to participate in this effort.

The Milwaukee Bar has participated regularly in this discussion and has offered some assistance. The Chief Judge meets with the Milwaukee Bar Association Bench/Bar committee every month. Individual judges attend that meeting also. Each judicial division meets regularly with the Milwaukee Bar members of that division. But judges have ethical rules that limit what they can accept from the private bar. The importance of an independent, unbiased judiciary is the basis for the ethical rule.

14. Judicial Best Practices

Response: We agree with this recommendation. It is something we always do and will continue to do. We could not be as efficient as this audit has found us to be if we did not do this. The Chief Judge has always been committed to a continuing exploration of best practices to improve the operation of the court.

As noted in the summary above, judges meet regularly to address, develop, reexamine and refine court-processing issues. For example, all judges meet monthly in each division to address courtroom efficiency practices and other issues. All judges in each division also meet once a year for a full day to address these issues. Judges are obligated to attend at least 10 hours of state judicial education each year. State judicial education programs address these same case management issues. Many of the Milwaukee judiciary teach other judges from

Wisconsin and the rest of the U.S. on judicial best practices in courtroom management. Because Milwaukee's civil division is a recognized model nationwide for efficiency, our judges are asked to teach our practices. A large committee of Milwaukee judges has developed Local Rules that embody best practices and we are in the process of updating them and making them available to the public on line. The Chief Judge's Executive Committee meets to review the judiciary practices as well. In addition, the Combined Courts meets weekly with all administrators and key staff on the issues of efficient court processing. There are regular meetings for the Intake court processing, the Domestic Violence court processing. All of these many local judicial meetings are on the judges' own time, at noon, so that they don't take away from calendar processing time.

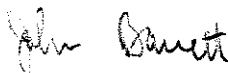
The Combined Courts and the Milwaukee judges in particular, are committed to Justice and efficient court processing. Judges work long and hard, on their own time and on the bench, to achieve that goal. But it must be remembered that a judges' first job is Justice. The Constitution of the United States ensures each citizen's right to Justice. That applies to individual citizens, small businesses and big corporations. When it's your case, you don't want the judge to hurry through to meet quotas. The Milwaukee judiciary will continue to balance efficiency and fairness and is committed to the best practices that will provide both of those goals.

E. Summary

The Combined Courts welcomed this audit and is highly appreciative of its fairness and thoroughness. We wish to commend the Department of Audit and the NCSC for their exhaustive review and comprehensive report. We certainly agree with their conclusions that our Milwaukee courts are highly efficient, cannot be cut any more and would be more efficient with more staff and resources. We agree with all of the recommendations and will do our best to implement all of them.



Hon. Kitty K. Brennan
Chief Judge - 1st Judicial District
Milwaukee County



John Barrett
Clerk of Circuit Court
Milwaukee County

APPENDIX A



***Milwaukee County Circuit Court
Efficiency Study:
Final Report and Recommendations***

July. 2006

**Project Staff:
John T. Matthias
John W. Douglas
Francis P. Keough**

**Daniel J. Hall, Vice President
Court Consulting Services
707 Seventeenth Street, Suite 2900
Denver, Colorado 80202-3429
303-293-3063
FAX 303-296-9007
Federal ID # 52-0914250**

***Milwaukee County Circuit Court
Efficiency Study:
Final Report and Recommendations***

Table of Contents

Executive Summary	1
Overview	2
Operations Assessment and Recommendations	2
Category: Human Resources	3
Category: Information Technology	5
Category: Interaction with Other Justice Agencies	6
Category: Access to Justice	9
Category: Caseflow Management	10
Category: Strategic Planning	12
CourTool Performance Measures	12
Possible Causes for Variations in the Pace of Litigation	23

NATIONAL CENTER FOR STATE COURTS (NCSC)
Milwaukee County Circuit Court Efficiency Study
Final Report & Recommendations

EXECUTIVE SUMMARY

As a matter of terminology, the Circuit Court and the Circuit Clerk are collectively referred to as “the Court.” The Court is operating efficiently according to both statistical performance measures and on-site evaluation by experienced court management consultants. Operational efficiency would be higher if the Court had more than the current minimal staffing. Reductions of court staff or other resources will put at risk the level of service to the public that the Court currently provides, which is crucial to maintaining the social fabric.

The NCSC project team found no obvious large inefficiencies that represent waste of resources or that would significantly improve the Court’s operational efficiency at little or no cost. Most of the recommendations will improve operational or organizational efficiency incrementally. Some recommendations require some investment in order to achieve an increase of efficiency. The Court is already conscious of budget issues and is continually reviewing its external face to the public and its internal processes to maintain good levels of service with available resources.

Environment in Which the Justice System Operates

When reviewing the Court’s efficiency, we must acknowledge the political, fiscal, and cultural forces at play in the environment in which the Court is operating.

- Persistent issues of the relative burden of state versus county funding of the courts
- Statewide judicial workload study in progress that will set a baseline of judicial staffing in Milwaukee and other counties
- Population decrease of Milwaukee County by about 5 percent in the last five or ten years and the accompanying change in the socioeconomic profile of the county
- Security concerns in the court community that have increased in recent years, in concert with security concerns in the larger community, which are heightened every time there is a court security incident elsewhere in the country
- Age, facility layout, and maintenance issues of the Milwaukee courthouse that cause some inefficiencies in operations
- Persistent issues of defendant/party transport from a number of locations to the Court, including the jail, House of Corrections, Milwaukee Secure Detention Facility, mental health facilities, and institutions of the State Department of Corrections
- Numerous job vacancies in the Court because of budget issues

Strengths and Assets of the Court

Despite the challenges facing the Court, a number of strengths and assets are evident:

- Circuit Court and Circuit Clerk leaders are knowledgeable and articulate about the challenges facing them and their strategies in coping with them
- Court staff are hard-working and dedicated to providing the highest levels of service they can
- Statistical performance measures indicate that the Court is keeping up with its workload and resolving cases in a timely way
- The Court internally, and other agencies that coordinate efforts with the Court, act in a collegial manner and routinely cooperate with each other in both daily operations and on-going problem-solving efforts
- In the same vein, the Court and other agencies have developed innovative practices to make the best use of limited resources available

OVERVIEW OF THIS REPORT

This report addresses three areas:

- Operations Assessment and Recommendations – Issues of operational efficiency identified during on-site interviews and observations
- CourTool Performance Measures – Assessment of the court based on certain performance measures using data generated from the CCAP case management system or sampled through standard auditing procedures
- Possible Causes for Variations in the Pace of Litigation – Identification of judicial rotation of assignments and other factors that may cause the rate of case disposition to vary from judge to judge

OPERATIONS ASSESSMENT AND RECOMMENDATIONS

Assessments and recommendations in the following topic areas are aimed at increasing operational efficiency of the Circuit Court and of its justice system partners.

1. Refilling Approved Positions
2. Assigned vs. Pooled Courtroom Clerks
3. Staffing Model
4. Family Court CCAP Access to Children's Court Cases
5. CCAP Jury Module
6. Videoconferencing Capability
7. Access to Inmate Location Information
8. Pro Se Assistance
9. Public Information on Access to Children's Court
10. Scheduling Orders
11. Re-incarceration Docket
12. Service Implementation Hearings
13. Court Technology Strategic Planning

Each topic is addressed in the following terms:

- Condition/Cause – Description of the situation, problems caused, contributing factors that cause this situation
- Recommendation – Policy or process that will alleviate the situation, based on a standard or best practice
- Implementation issues and cost impact

Category: Human Resources

1. Refilling Approved Positions

Condition/Cause

The County budget office properly requires justification for each advertised position in the Clerk's Office. When the Clerk's Office fills the position, sometimes the person hired proves satisfactory and sometimes not. In cases where the new employee is terminated before the end of the probationary period, the Clerk's office needs to fill the same position again.

The issue is that the Clerk's Office seeks to fill the recently-approved position but the budget and fiscal administration does not act on the request in a timely manner. It appears that the Clerk's Office must again, in effect, receive county budget office approval to fill that position, even though they recently justified filling the position and the budget office approved it.

The Clerk's Office could potentially not receive authority to hire again even after it had already been approved the first time. The result is that Fiscal and Budget is unnecessarily remaking a decision that it has recently made. Making the same decision more than once reduces the ability of Clerk's Office managers to manage the level of resources within their domain without any apparent benefit to the County.

Recommendation

Streamline the process of re-filling a position that has already been approved and filled but vacated within the new hire's probationary period.

Cost Impact and Implementation Issues

The current process is costly and redundant. It lengthens the time to fill an approved position with a satisfactory employee. The recommendation would probably be implemented countywide, since presumably the Clerk's Office is being treated the same as other units of county government.

2. Assigned vs. Pooled Courtroom Clerks

Condition/Cause

Courtroom clerks in the Court fit one model of assignment and operation: a clerk's primary duty station is in the courtroom; they are assigned to a judge and generally rotate

with the judge. When assigned to a judge in the Civil Division, they maintain the case file in their courtroom and accept filings from attorneys in the courtroom; they turn audio recording machines on and off in the courtroom where there is not an audio recording clerk. In short, a courtroom clerk performs a large number of duties.

Courtroom clerks are highly experienced in Court operations and are under enormous pressure from all sides – judge, Clerk’s Office, attorneys, and litigants. Smooth operation of the courtroom is dependent on the clerk’s knowledge of how their judge wants to operate, and a close working relationship typically develops between a judge and the clerk that contributes significantly to efficient day-to-day functioning of the courtroom.

During interviews, the suggestion was made that the number of courtroom clerks could be reduced by pooling them and assigning them as needed to courtrooms, based on demand, to reduce their apparent inactivity when court is not in session.

Recommendation

Continue the current policy of assigning courtroom clerks to individual judges, not moving toward pooling. Every judge has a distinct work style and approach to operating their courtroom, and there is no single or “correct” way to do it. A courtroom clerk who learns a judge’s style of operating is more efficient and maintains a flow of activity in the courtroom compared to a clerk who would be occasionally assigned to a particular judge.

Cost Impact and Implementation Issues

Pooling courtroom clerks would be counterproductive. The courtrooms are minimally staffed as it is, certainly not overstaffed, and when a clerk learns what the judge wants, there is peak efficiency.

3. Staffing Model

Condition/Cause

In assessing the match between resources and workload, it is an increasingly common approach in government to assess the amount of work based on specific tasks to perform it. Such an assessment includes the question of whether staff has time to complete each task in a reasonable and satisfactory way. A workload assessment sets a baseline to be used, over time, as workload goes up or down. In 2006, the NCSC is conducting a workload and resource assessment in Wisconsin for judges and court commissioners. This is the state’s attempt to maintain responsiveness to judicial workload demands inherent in the caseload by documenting their core functions and examining the duties they discharge.

The state of Minnesota conducted a court staff workload assessment in 2004. The report is available at

http://www.ncsconline.org/WC/Publications/Res_WorkLd_MinnCtStaffWkLdAsCov04Pub.pdf. Such an approach removes significant subjectivity in making staffing level decisions.

Recommendation

Develop a Court staffing model with which to determine staffing needs. Staffing is currently determined by previously allotted FTE positions and the immediate needs of the Court to satisfy a current workload or work process issue. The development of an optimum staffing model would better define the Court's current staffing issues and promote tactical as well as long-range planning.

Cost Impact and Implementation Issues

Developing a staffing model through a workload assessment will cost money, but will have beneficial long-term effects. Such an assessment generally provides an as-is profile of staffing levels and is most useful as a baseline for evaluating whether staffing levels are appropriate as workload fluctuates over periods of time. The state will not likely sponsor a workload assessment of Circuit Court support staff because these staffs are county funded. The County, individually or in consortium with other counties, may undertake such an assessment.

Category: Information Technology***4. Family Court CCAP Access to Children's Court Cases***Condition/Cause

Judges and staff in all Court divisions demonstrate high levels of collegiality and cooperation. One of the structural realities of the Court is the separation of Children's Division cases from Family Division cases. There are occasions where cases overlap between the two divisions. Children's Division orders trump Family orders, as a matter of law, and there are occasions when there are overlapping orders. For example, a divorce proceeding or custody modification may involve a delinquent or dependent child. A guardian ad litem appointed to represent the interests of the child may not be aware of a pending divorce or decree modification because the Children's judge did not know about it either.

Family Division judges currently have no access to Children's cases. It appears to be a matter of local court policy whether or not to allow mutual access to cases.

Recommendation

Authorize judges and staff in Family Division to access CCAP for Children's Division cases and vice versa. This will increase communication between the divisions, reduce overlaps, and produce overall economies by facilitating coordination of the divisions.

Cost Impact and Implementation Issues

Implementing this recommendation will have virtually no cost because it involves changing case access permissions in CCAP. It can also be done immediately to produce the effects described above.

5. CCAP Jury Module

Condition/Cause

In order to avoid paying software upgrade charges for vendor-provided jury management software, the Court agreed to use the CCAP Jury Management module provided certain enhancements were made. As modified, it doesn't do everything the Court wants, but it's better than before.

The following deficiencies remain:

- Staff are unable, using information in the system, to figure out where the jurors are, in what courtroom, at any given time
- The system allows people to be assigned to more than one courtroom (People can't keep track of what building or judge their jury is with.)
- System can't keep audit history, or reasons for postponing jurors
- Letters for postponing jury service are more of a manual process than before
- Need to provide better statistics, including information on Bateson challenges

In summary, currently the CCAP Jury Management module does not fit the needs of the court and is less efficient than the previous software application. The jury management team is making it work the best way possible, despite its deficiencies. CCAP said this upgrade will be high priority. The design committee is essentially inactive.

Recommendation

Urge the state to develop and implement previously proposed changes to the CCAP Jury Module. The design committee needs to meet and identify the functional improvements for the jury module in order for reprogramming to occur. The state needs to fund the enhancements.

Cost Impact and Implementation Issues

Software modifications will be funded by the state. When developed and implemented, the jury management unit will become more effective. When that state of affairs occurs, staffing needs of the unit can be reassessed.

Category: Interaction with Other Justice Agencies

6. Videoconferencing Capability

Condition/Cause

The Court's videoconferencing capability has been funded through Local Law Enforcement Block Grants from 1999 to 2005 and through a Justice Assistance Grant for 2005 on. The funds have paid for the salary and benefits of a video conferencing technician, equipment purchase and maintenance for ten (10) units, tools, supplies, and education/training. The videoconferencing technician trains bailiffs how to use the equipment. The demand for use of videoconferencing has steadily increased. The

equipment may be nearing the end of its lifecycle. Capacity is limited to two videoconferences at one time because of the communications technology used (ISDN).

The goal of videoconferencing is to provide remote court access and testimony by physicians and witnesses and to reduce the transportation and housing costs associated with transporting inmates from remote facilities to and from the Criminal Justice Facility (CJF) for hearings in the Court. Approximately 50 percent of the court requests came from criminal felony courts. Approximately 25 percent of the requests came from Family Court Commissioners for paternity/child support and family case types where one of the parties is incarcerated in the CJF. Of the 539 requests in 2005, 499 involved inmates and 40 involved witnesses at remote locations. During 2005, there were approximately 45 requests per month, and hearings were conducted on average 709 minutes per month.¹

There are videoconferencing hookups at all state Department of Corrections' facilities, Mental Health institutes, treatment centers, House of Corrections, and Children's Division facility. Doctors testify using video to avoid trips to Milwaukee. Judges must all be comfortable that video court appearances are being used appropriately and not interfering with any defendant's rights.

While videoconferencing has important implications for both the Court and the Sheriff, the Sheriff's Department bears housing costs associated with producing state and federal inmates for appearances in the Court. Using figures provided by the Sheriff's Department of Fiscal Affairs, it is estimated that the hearings conducted via videoconferencing saved the Court approximately \$54,000 in 2005.²

Recommendation

Expand the availability and use of videoconferencing to enhance public safety and reduce the cost of transporting defendants to court. In order to expand the availability and use of videoconferencing, the technology should be updated from telephone (ISDN) to computer-based communications (IP). Use of the attorney/client video visiting room on the third floor of the Safety Building should be promoted to attorneys to increase usage.

Cost Impact and Implementation Issues

Videoconference is embraced by the court community. As demand increases beyond the current levels, demand will exceed capacity, and scheduling conflicts will continue to increase. Hearings often need to be scheduled around the technician's availability as opposed to the court's availability.

The cost of maintaining the current equipment should be compared to the cost of new equipment which will have more longevity than the current seven year old equipment. A new infrastructure of wiring, however, will be required to do so. This will eliminate telephone line charges, reduce maintenance costs, and increase reliability, although the IP

¹ 2005 Annual Video Conferencing Report, by Michael Pook, Video Conferencing Technician, dated March 21, 2006.

² 2005 Annual Video Conferencing Report, Attachment 4.

technology will require new wiring. Service contracts on all nine units will equal the cost of purchasing new equipment. In addition, as other government entities, facilities, and programs convert to newer computer-based communications (Internet Protocol or IP technology), the County must also convert or lose the ability to connect with these locations. The amount of incompatibility will increase as time goes by.

7. Access to Inmate Location Information

Condition/Cause

The state Department of Corrections, has a right to move inmates among facilities as it sees fit. There is frequent or constant movement of inmates because of space issues in their institutions. The District Attorney issues an “order to produce” to bailiffs, requesting them to deliver in-custody defendants when needed in response to a court order. A common hearing type is reconfinement hearings: defendant is currently in custody having been on extended supervision and either did not comply with conditions or they committed a new violation, so they must come back for a hearing.

Part of the problem is that the District Attorney’s Office that prepares the order to produce does not know where the defendant is. By the time a request reaches a DOC institution, the inmate may have been moved to another location. An active work group on this issue includes the District Attorney’s Office and Sheriff’s Department, though the work group’s area of inquiry includes more than re-confinement cases – revised processes.

Recommendation

The Sheriff’s Department and District Prosecuting Attorney should diligently pursue access to the state Department of Justice Wilenet (the Wisconsin Law Enforcement Network, www.wilenet.org) to help them obtain up-to-date information on the location of inmates in the state’s penal institutions to facilitate economical transport logistics.

The Court, the State Public Defender’s office, and registered private attorneys should also have direct, or indirect but readily available, access to this information to facilitate locating defendants and facilitate communications with defendants.

Cost Impact and Implementation Issues

Implementing this recommendation will have virtually no cost because it involves changing case access permissions to Wilenet. The Department of Justice owns the system, but should be able to accommodate a certain number of new users to its system.

Category: Access to Justice

8. Pro Se Assistance

Condition/Cause

Although the Self-Help Clinic (otherwise called the Pro Se Assistance program) is operated by volunteers, the Court provides courthouse facilities, staffs an information line in the Clerk's Office, and manages it through a steering committee. A local law firm coordinates volunteers to staff the clinic on Thursdays from 11:30-1:00. The clinic serves unrepresented litigants in family and small claims cases.

Nationwide and in Milwaukee, unrepresented litigants consume a disproportionate share of court time, in relation to their numbers. Pro se litigants require extra time in court because they are unfamiliar with the court processes. Judges ensure that their rights are protected without advocating for them – a time consuming process, but a necessary one.

Recommendation

Expand pro se assistance to unrepresented litigants. This will provide better customer service for pro se litigants and use less courtroom time currently required to meet the needs of pro se litigants.

Cost Impact and Implementation Issues

Implementing this recommendation will have virtually no cost because the Self-Help Clinic is staffed by volunteers. Overhead costs by the Court will not measurably increase. The benefit to the community will be significant, and court time now spent looking out for the rights of unrepresented litigants will decrease to some extent.

9. Public Information on Transportation to Children's Court

Condition/Cause

The location of the Children's Division on the west side of the county makes it difficult for some litigants to attend court. Public transportation is available but requires information and personal organization. Hearings cannot be held if litigants are not present.

The website for the Children's Division has a street address in Wauwatosa and a phone number, but no bus routes, expected travel times, or street directions.

Recommendation

Provide better public information on how to get to Children's Court in flyers and on website.

Cost Impact and Implementation Issues

Implementing this recommendation will have virtually no cost because the County has in-house capability to add the additional information about transportation to the court. Additional information will enhance the on-time arrival of litigants.

Category: Caseflow Management

10. Scheduling Orders

Condition/Cause

Circuit Court Rules for the First Judicial District (Milwaukee) Felony and Misdemeanor Divisions, specifically Court Rule 414.E, specifies that “A standard pretrial scheduling order will govern all discovery matters, motion litigation, guilty pleas, and trial status.” Not all judges in these divisions use a pretrial scheduling order. Such an order is prescribed as standard caseflow management practice, and sets the deadlines for future milestones and events.

Recommendation

Uniformly enforce court policy that all judges must use a pretrial scheduling order to ensure that cases are progressing toward resolution.

Cost Impact and Implementation Issues

Implementing this recommendation will have virtually no cost. Pretrial scheduling orders will help ensure that cases, under management of the Court rather than the litigants, will have milestones toward completion.

11. Re-incarceration Docket

Condition/Cause

When a defendant released on parole commits another offense, the defendant is subject to revocation of parole. For the Probation & Parole (P&P) Division of the Department of Corrections, the problem is timeliness in getting the person back to court for re-incarceration hearing (re-sentencing after revocation). A parole agent initiates the revocation and conducts an investigation in order to prepare an investigation report (a “mini-PSI”) for an administrative law judge to make a recommendation to the Court. In the meantime, the defendant is in jail or transferred to a Department of Corrections institution on the new charge while P&P prepares the investigation report, the administrative law judge makes a recommendation, and the Court schedules re-sentencing in a re-incarceration hearing.

According to P&P, during the 15-month period from March 2005 through May 2006, there were 1,014 re-sentencings, out of a total of 4,666 felony cases they handled. That amounted to 68 cases per month, and 22% of their felony caseload.

Recommendation

Consider creating a re-incarceration hearing docket to focus the Court's attention on this type of hearing and promote timeliness in hearing these cases. There are likely other case types demanding attention for limited resources. The Court must balance its workload with its capacity, and put its resources where they will promote the administration of justice as much as possible.

The Department of Corrections Division of Community Corrections is concerned about delays in the Court's conducting re-incarceration hearings. Current Court policy requires a Court Commissioner to order revoked parolees to a "state bed" in the Department of Corrections, in order to conserve "local beds." Revoked parolees will receive credit for time served in any event, but timeliness is the issue. The Court may choose to establish a special docket for re-incarceration hearings, currently spread across dockets of Felony Division judges whose cases they are. Aggregating these cases into a regularly scheduled docket may focus attention on these cases and help ensure their prompt disposition.

Cost Impact and Implementation Issues

Implementing this recommendation will have virtually no cost. Currently these cases are scattered among Felony Division dockets, so aggregating them to one or more dockets during a week (or as needed) would promote timeliness in handling these cases without unduly delaying other cases or case types, if thoughtfully implemented.

12. Service Implementation Hearings

Condition/Cause

When a child is removed from the home at the beginning of a dependency/neglect case in Children's Court, between the 14th to 23rd day before initial appearance, a Family Court Commissioner holds a "service implementation hearing" to get the parents and service agencies together to plan what social services will be provided to the child. This practice probably originated in earlier days when the Welfare Bureau was at its low ebb of providing services and the Children's Court wanted to ensure that the case was underway before the judge held the initial appearance.

Recommendation

The Children's Division should consider eliminating service implementation hearings in order to speed up the court process and save valuable court time. Communication about services provided to the child occurs at the family site meeting and orders are not generated as a result of the service implementation hearings.

Cost Impact and Implementation Issues

Implementing this recommendation will have virtually no cost. Savings would accrue because the hearings are now mostly an anachronism and commissioner time is not needed to accomplish the desired goals.

Category: Strategic Planning

13. Court Technology Strategic Planning

Condition/Cause

A “Courts Technology Update” meeting was held March 22, 2006, reported to Supervisor Richard D. Nyklewicz, Jr., Chairman of the Committee on Finance and Audit, by Bud Borja, Chief Information Officer, Information Management Services Division, and Kitty Brennan, Chief Judge, First Judicial District, Milwaukee County. Topics addressed included public kiosks to be implemented in March 2006, courtroom sound systems, and videoconferencing.

Recommendation

The Court should continue to aggressively develop a long-range court technology plan, especially in the use of technology in courtrooms, and involve the bar in such planning.

Cost Impact and Implementation Issues

Implementing this recommendation will have virtually no cost, because the Court is doing technology planning. Getting input from the bar as one of the major stakeholders will help the Court achieve its overall goals and better accommodate the needs of litigators.

COURTOOL PERFORMANCE MEASURES

Overview of CourTools Performance Measures

Effective measurement is key to managing court resources efficiently, letting the public know what the court has achieved, and helping identify the benefits of improved court performance. CourTools support efforts toward improved court performance by helping: (1) clarify performance goals, (2) develop a measurement plan, and (3) document success. A balanced set of court performance measures provides the judiciary with the tools to demonstrate effective stewardship of public resources. Being responsive and accountable is critical to maintaining the trust and confidence the courts need to deliver fair and equal justice to the public.

The Milwaukee County Auditor’s Office requested that the National Center for State Courts (NCSC) use several of the CourTools to measure performance of the Milwaukee County Circuit Court. Through mutual agreement, the NCSC selected the performance measures set forth below. The performance measures analyzed are the following:

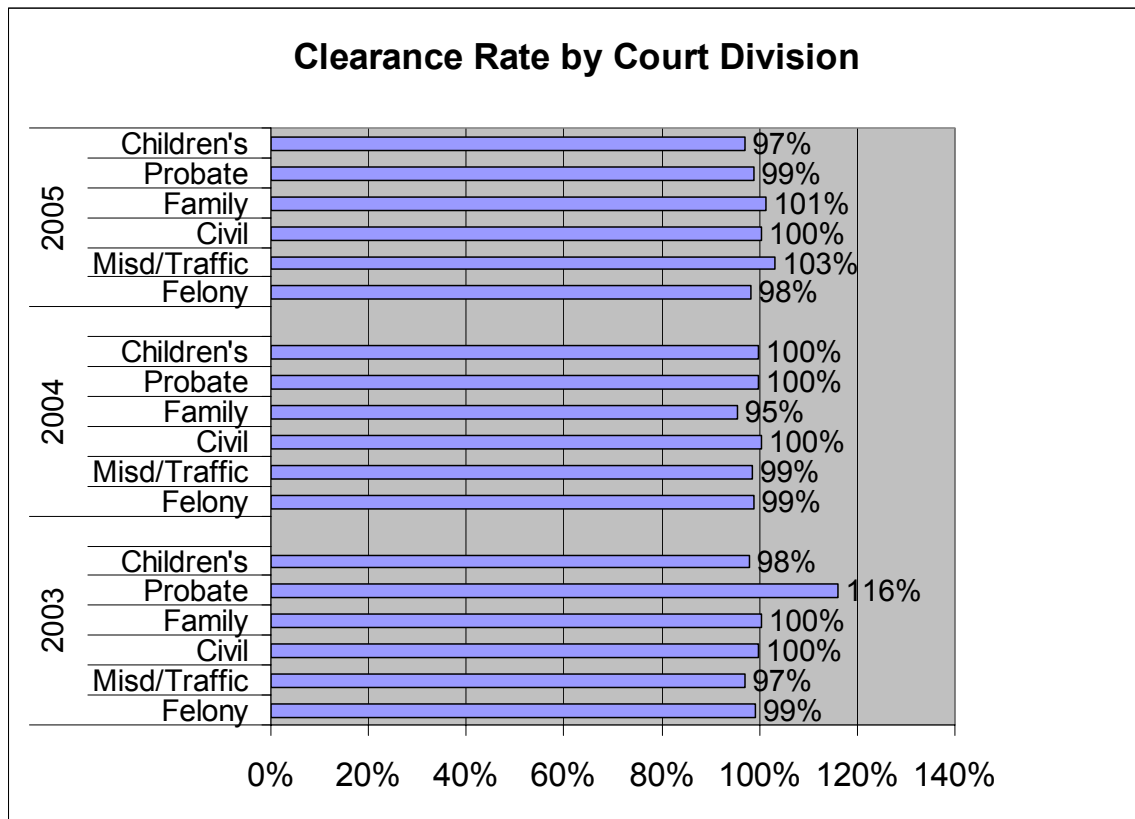
- CourTools Measure 2 – Clearance Rate
- CourTools Measure 3 – Time to Disposition
- CourTools Measure 4 – Age of Active Pending Caseload
- CourTools Measure 5 – Trial Date Certainty
- CourTools Measure 10 – Cost Per Case

There are a variety of measures by which a court can assess its operations and its service to the public, but performance measures 2, 3, 4, and 5 are the most prominent barometer of court functionality – the ability of a court to provide timely resolution of the matters before it.³ Delay causes injustice and hardship, and it is a primary cause of diminished public trust and confidence in the courts. A court's compliance with basic rules of established procedure – especially the rules governing timeliness – can, by itself, ensure justice. The fourth performance measure 10, Cost Per Case, establishes a benchmark for future comparison.

CourTools Measure 2 – Clearance Rate

This performance measure is defined as the number of outgoing cases as a percentage of incoming cases, that is, whether the court is keeping up with its incoming caseload. If cases are not disposed in a timely manner, a backlog of cases awaiting disposition will grow. This measure is a single number that can be compared within the court for any and all case types, on a monthly or yearly basis, or between one court and another. Knowledge of clearance rates by case type can help a court pinpoint emerging problems and indicate where improvements can be made or where additional resources should be put.

³ The main model for assessment of court operations is contained in the *Trial Court Performance Standards*, norms that represent the work of a national commission funded by the Department of Justice, Bureau of Justice Assistance and dating from 1997; these norms have been supplemented by *CourTools* court performance measures. They are available at http://www.ncsconline.org/D_Research/CourTools/temp_courttools.htm

Table 1 - Clearance Rate by Court Division**Analysis of Milwaukee Clearance Rate Data for 2003-2005**

For all three years, the clearance rate hovers around 100%, with some case types in some years slightly higher than 100 percent and in other years slightly lower. When three years of clearance rates in a case type are averaged, such as Misdemeanor/Traffic with values of 97 percent, 99 percent, and 103 percent, the result is a number close to 100 percent. While there is minor fluctuation from year to year, the trend in the Milwaukee data is equilibrium over the three years. No backlog is developing in any case type.

When analyzing clearance rates, there are at least two warning signs to look for. One warning sign is large fluctuations from year to year, indicating considerable change in caseload or in resources applied to disposing cases. Another warning sign is a trend toward decreasing clearance rates from one year to the next without a bounce-back of catching up, indicating buildup of a backlog. The Milwaukee data does not show a sign of either warning sign for 2003-2005.

CourTools Measure 3 –Time to Disposition

This performance measure is defined as the percentage of cases disposed or otherwise resolved within established time frames. The first element is time to disposition, a calculation of the length of elapsed time from case filing to case resolution. For cases

disposed in 2005, for example, the date of filing is subtracted to determine the time to disposition. The second element is local, state, or national guidelines as a case-processing time standard. The measure takes into account periods of inactivity beyond court control (e.g., absconded defendants, cases suspended pending decision on an appeal or in bankruptcy) and provides a framework for meaningful measurement across all case types.

The time standards used are voluntary standards developed by the Committee of Chief Judges of Wisconsin's ten judicial districts. The case processing time standards, for instance, provide that 90 percent of felony cases should be completed in 180 days. A time standard is set for most case types in every court division.⁴ Measure 3 Time to Disposition asks, "What percentage of our cases are being processed within our time standards?"

Table 2 - Time to Disposition Using Wisconsin Case Disposition Time Standards

	Days	% to be Completed	2003	2004	2005
			Milwaukee	Milwaukee	Milwaukee
Felony			% Completed		
Felony	180	90%	69%	68%	61%
Misdemeanor/Traffic					
Misdemeanor	180	95%	70%	69%	71%
Criminal Traffic	180	95%	66%	55%	51%
Contested TR/FO	180	95%	87%	89%	89%
Civil					
Pers. Injury/Prop. Damage	540	90%	85%	84%	84%
Contracts/Real Estate	360	80%	95%	95%	95%
Other Civil	360	80%	98%	99%	98%
Small Claims (Contested)	90	80%	79%	81%	74%
Family					
Divorce	360	90%	90%	87%	88%
Paternity	180	90%	76%	64%	54%
Other Family	360	90%	99%	99%	99%
Probate					
Estates	360	80%	27%	36%	34%
Informal Probate	360	80%	43%	43%	45%
Juvenile					
Juv.-Delinquency	90	95%	67%	70%	65%
Juv.-CHIPS	90	95%	39%	36%	35%
Juv.-Ordinance	30	95%	73%	82%	77%
Term. Of Parental Rights*	120**	95%	94%	91%	92%

⁴ It should be noted as a matter of completeness that some case types for which data are tracked do not have a time standard set for them. They are subcategories of Probate cases that generally have annual reporting requirements or otherwise do not fit the pattern of cases that are filed and routinely disposed. These subcategories are Trusts, Guardianships, Commitments, Adoptions, and Probate Other.

Analysis of Milwaukee Time to Disposition Data for 2003-2005

The Milwaukee data for time to disposition shows considerable variation among case types and court divisions, and smaller variations from year to year within a case type. Among divisions of the court, the Civil Division disposes of cases closest to the standards, between 74 percent and 98 percent for four civil case types.

Within case type, fluctuation from year to year ranges from a 1 percent shortening of time to disposition in misdemeanor cases, to a 22 percent lengthening of time to disposition in paternity cases. The average change is a 3 percent lengthening, and the median change is a 1 percent lengthening. The three case types to watch because times to disposition increasing are paternity (22 percent), criminal traffic (15 percent), and felony (8 percent). Other case types may or may not meet time standards, but their times to disposition are generally increasing by only a few percentage points per year – the trend is not moving in the right direction, but generally disposition times are not lengthening rapidly.

CourTools Measure 2, Clearance Rate, shows that there is no backlog developing in any of the case types in 2003-2005, so other factors are affecting the time to disposition such as available dedicated resources, i.e. staffing, mix of more complex cases, or the lag time it takes for judges to become acclimated to a new case type due to judge rotation.

CourTools Measure 4 –Age of Active Pending Caseload

This performance measure is defined as the age of active cases that are pending before the court, measured as the number of days from filing until the time of measurement. This pool of active cases requires court action. Examining the age of pending cases draws attention to the number and types of cases drawing near the court's case processing time standards. Once the age spectrum of cases is determined, the court can focus attention on what is required to ensure cases are brought to completion within reasonable timeframes.

It is possible for a court to show expeditious processing of disposed cases, yet have undesirably high figures for the age of its pending caseload. This happens when routine cases move smoothly through the court system while problematic cases are allowed to continue aging. Moreover, an increase in the age of pending cases foreshadows difficulties a court might have in continuing its past degree of expeditiousness. Measure 4 Age of Active Caseload asks, "What percentage of our cases exceed our time standards?"

There are a number of ways to analyze the data. One can examine by case type the number of cases in each period 0-30 days, 31-60 days, and so forth, to see during which period the age of active pending cases meets the time standard. This data will enable the Court to see which case types do not meet time standards and by how much. That analysis is available but not included in this report.

Median age of pending cases by case type is an indicator. The trend of median age of pending cases by case type during 2003-2005 is graphically displayed below:

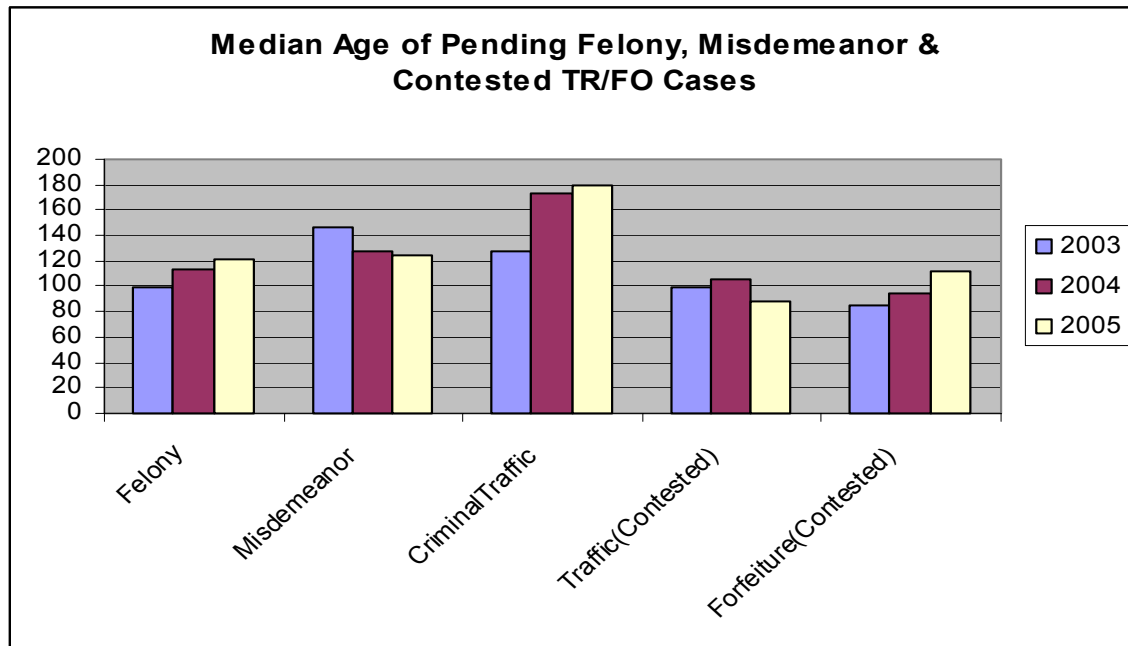
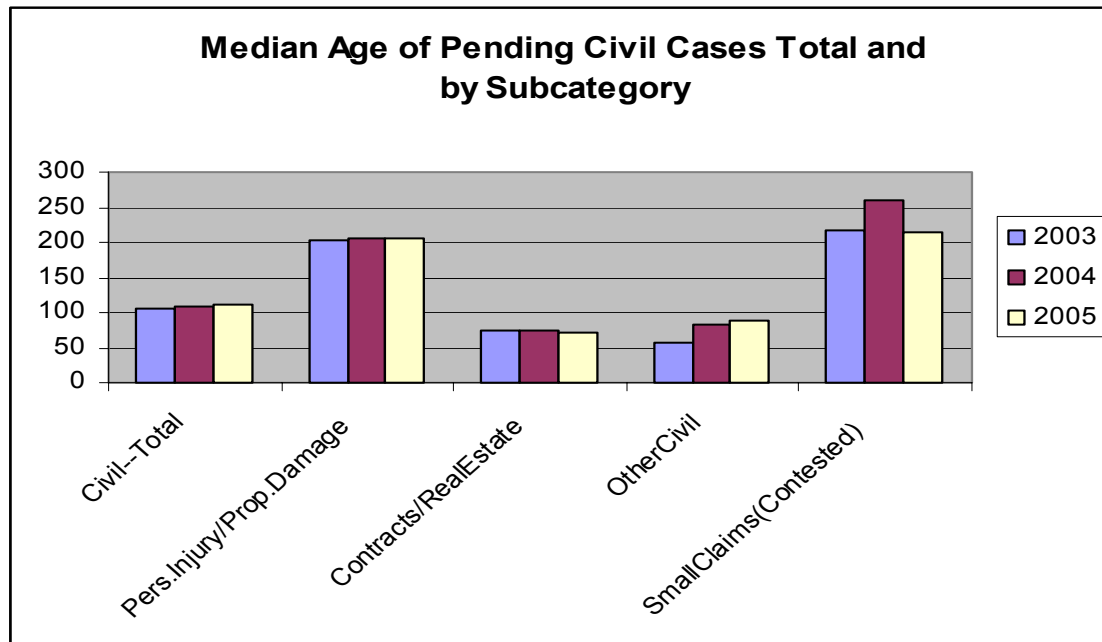
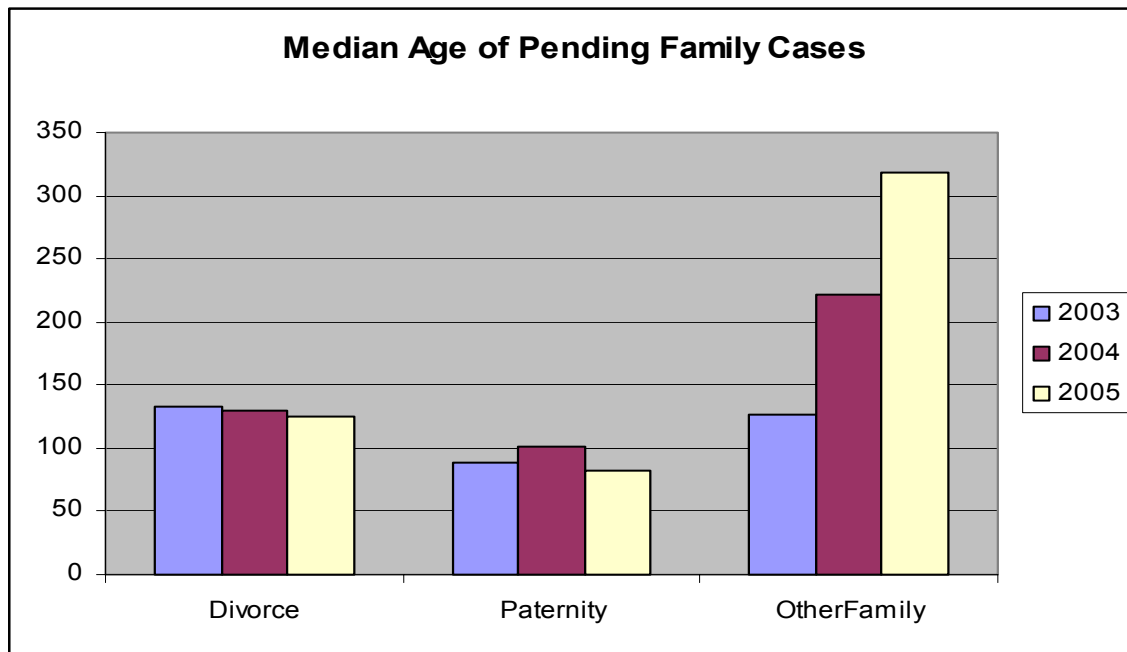
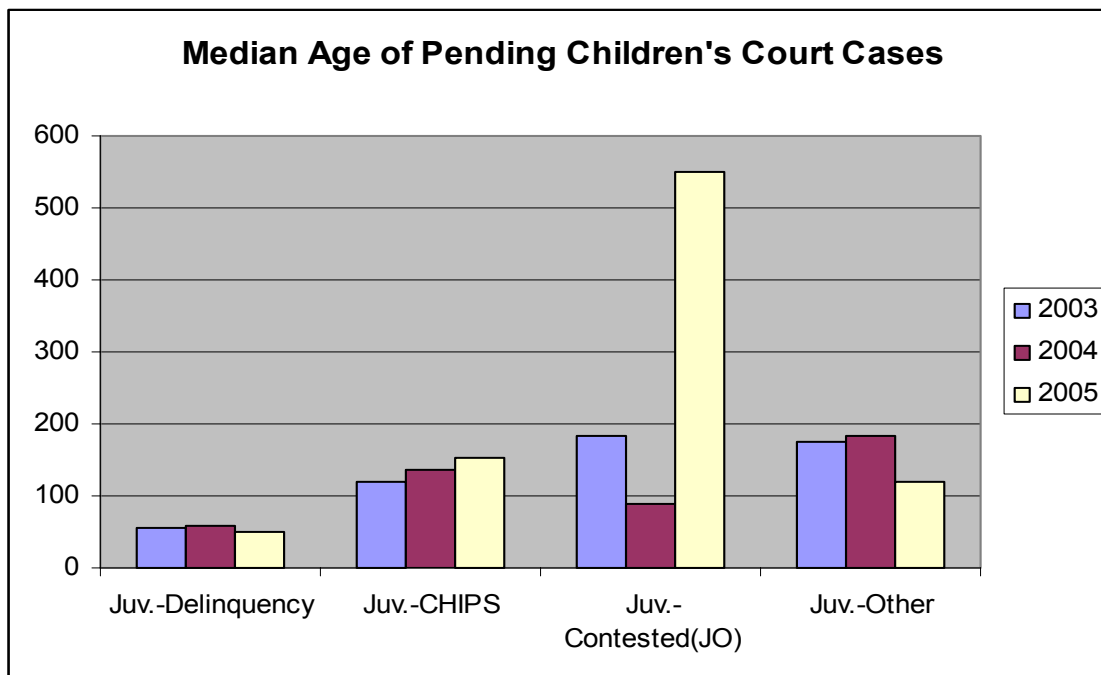
Table 3 - Median Age of Pending Felony, Misdemeanor, & Contested TR/FO Cases**Table 4 - Median Age of Pending Civil Cases Total and by Subcategory**

Table 5 - Median Age of Pending Family Cases**Table 6 - Median Age of Pending Children's Court Cases**

Analysis of Milwaukee Age of Active Pending Caseload Data for 2003-2005

The tables above show that, by case type, the median age of the pending caseload is decreasing, specifically misdemeanor, contested traffic, small claims, divorce, paternity, juvenile delinquency, and juvenile-other. This is encouraging, but there are a number of stagnant cases in every case type. There may be legitimate reasons for a few cases to take a longer time to resolve, such as unavailability of DNA results, but a number of management approaches are available to managers to identify the problem cases and address the underlying issues.

As a supplement to Measure 3 Time to Disposition, the age of pending caseload data show another view of the general lack of meeting time standards and also the three year trend of the age of the pending caseload.

In felony cases, for example, the time standard is disposing 90 percent in 180 days; in 2005 the 90 percent level was reached some time after 360 days. The data available are not fine-grained enough for the court to determine where in the range of 361-540 days the 90 percent completion mark is reached. The median age of pending felony cases is increasing from 2003 to 2005. The court can use this information to explore the causes of the increasing age of pending cases.

Measure 2 Clearance Rates tells us that felony and all other cases are being resolved at approximately the rate they are being filed, but the cases are taking longer to resolve than the goals set in the time standards. Elsewhere in its deliverables, the NCSC has identified some causes for variation in the times that cases are resolved.

CourTools Measure 5 – Trial Date Certainty

Trial Date Certainty, CourTools performance measure 5, is defined as the number of times that cases disposed by trial are scheduled for trial. A court's ability to hold trials on the first date they are scheduled to be heard (trial date certainty) is closely associated with timely case disposition. This measure provides a tool to evaluate the effectiveness of calendaring and continuance (adjournment) practices. For this measure, "trials" includes jury trials, bench trials (also known as non-jury trials or court trials), and adjudicatory hearings in juvenile cases.

The data regarding trial date certainty provided to the NCSC appears below. As a matter of clarity, the NCSC changed the initial trial setting from zero to 1 in the table to reflect that it was the first calendared trial event. If a case was adjourned once after the first trial date was set, for example, this is counted as two trial settings, total.

For purposes of analysis, the total trials by case type were summed, and then the total trial settings were calculated to reflect the total number of times that cases were scheduled for trial. For example, the red highlighted underlined numbers below show that in Felony trials, nine cases were set or reset three times totaling twenty-seven scheduled trial events. The total row was calculated to determine that the *Total Trial Settings* for felony cases is 111 settings.

Table 7 - Number of Trial Settings Sampled

Number of Trial Settings											Total Trial Settings
Case Type	1	2	3	4	5	6	7	8	9	Total Trials	Total Trial Settings
Felony	15	16	9	3	0	0	1	1	1	46	111
Civil	43	4	3	0	0	0	0	0	0	50	68
Juvenile	36	7	6	0	1	0	0	0	0	50	81
Misdemeanor	24	12	8	3	1	0	0	1	1	50	107
Family	12	5	2	0	1	0	0	0	0	20	41
Probate	10	3	1	0	0	0	0	0	0	14	27

Calculation example: Felony 9 trials x 3 trial settings each = 27 total trial settings

The *Total Trial Settings* for each case type were then divided by the sample size to determine the average trial settings per case (Table 8 below). The closer the average trial setting is to 1.00, the better the court is performing according to the performance measure Trial Date Certainty.

Table 8 - Average Trial Settings per Case

	Total Trial Settings	Total Cases Sampled	Average Trial Settings per Case
Felony	111	46	2.41
Civil	68	50	1.36
Juvenile	81	50	1.62
Misdemeanor	107	50	2.14
Family	41	20	2.05
Probate	27	14	1.93

Analysis of Sampled Milwaukee Trial Date Certainty Data for 2005

The felony and misdemeanor ratios are numerically the highest; however, we have no perspective to determine if the average trial settings are increasing or decreasing.

The average trial date settings per case must be looked at in conjunction with other court performance indicators. If continuances are granted, are they granted for good cause, and are they granted prior to trial dates in order for the parties to settle, or are they granted after a trial date has been set? If the court is disposing cases according to American Bar Association standards, one can expect that continuances are granted expeditiously to ensure good court performance with quality results.

In addition to the *Average Trial Setting per Case*, the NCSC calculated the percentage of cases disposed within three categories in Table 9: (1) at the initial setting, (2) disposed after one additional setting, and (3) cases with more than one reset.

Table 9 - Cases Disposed at Initial Setting, after One or More Resets

	Initial Setting	One Reset	More Than One Reset
Felony	33%	67%	33%
Civil	86%	94%	0.06%
Juvenile	72%	86%	14%
Misdemeanor	48%	72%	28%
Family	60%	85%	15%
Probate	71%	93%	0.07%

Felony cases are the least likely to resolve at the initial setting. Only 33 percent of felony cases go forward at the initial scheduled trial date, although 67 percent of felony cases resolve after one reset. Earlier research conducted by the NCSC (available upon request) showed that out of 15 trial courts in a variety of state, only five courts had more trial date certainty on the initial trial setting in felony jury trials than Milwaukee's 33 percent.

Misdemeanor cases are the second least likely to resolve at the initial setting, but it is a good sign that 72 percent of misdemeanor cases resolve with the first reset. Trial date certainty is good in civil, juvenile, family, and probate cases, which are going to trial at least 60 percent on initial trial settings, and thus processing cases with a minimum amount of continuances.

The court's trial date certainty overall should be considered pretty good. In civil, juvenile, family, and probate cases, at least 85 percent of the cases are disposed by trial at the initial setting or with only one reset. Slightly less successful are felony and misdemeanor cases, although at least two-thirds of the cases are disposed by trial at the initial setting or with only one reset. The court, by establishing a pattern of credible trial dates through a firm and consistent policy to limit the number of trial day continuances, has broken the cycle of allowing lawyers not to be ready for trial and extending trial dates unreasonably into the future.

CourTools Measure 10 – Cost Per Case

This performance measure assesses the cost of processing a single case, by case type. Monitoring cost per case, from year to year, provides a practical means to evaluate existing case processing practices and to improve court operations. Cost per case forges a direct connection between how much is spent and what is accomplished. This measure can be used to assess return on investment in new technologies, reengineering of business practices, staff training, or the adoption of "best practices." It also helps determine where court operations may be slack, including inefficient procedures or underutilized staff.

The methodology of deriving this performance measure involves dividing the 2005 actual court expenditures by major case type, as represented by the numbers of judges, court staff, and Clerk's Office staff dedicated to each case type. Shared administrative staff FTE's are spread across the case types in proportion to the number of judges and staff handling the case types.

Analysis of Milwaukee Cost Per Case Data for 2005

Actual court expenditures in 2005 were \$49,564,847. Of 402.5 judges and staff, 299.5 were case-specific and 103 were shared across case types. The dollars associated with each case type based on number of judges and staff was then divided by the numbers of cases disposed in each case type. The cost per case are set forth below:

Table 10 - Cost per Case by Court Division

Felony	\$1,522.75
Misdemeanor/Traffic	\$ 136.59
Civil/Small Claims	\$ 165.96
Probate	\$ 421.57
Family	\$ 719.00
Juvenile	\$1,409.30

The cost per case is also allocated based on state-funded and county-funded contributions to the Circuit Court budget, based on state funding of 28 percent of the employees and county funding of the other 72 percent. This approach assumes that each FTE costs the same, although this is untrue. More precise cost per case requires exact salaries by FTE (identified individual) associated with a case type.

To compare costs over time, it makes sense to control for inflation by using an established economic index such as the Consumer Price Index. Once cost per case has been calculated at two different points in time, one of the calculations can be adjusted to account for changes in the cost of living, focusing on the "real cost" of court services changing over time.

Over time the costs per case may increase or decrease as court processes are changed to meet management goals, as technology is acquired, and as programs to serve litigants are included. Measuring cost per case will provide some evidence of the financial consequences of such changes.

If, for example, the court were to shift resources to felony cases, the cost per case would rise, and other performance measures may show reduced time to disposition. Cost analysis will promote understanding between costs and outcomes, such as whether higher cost per case is associated with more effective services or increased security. A higher cost per case may not mean the court is inefficient; it may indicate that the court is now providing higher quality service than before. If a strategy is "cost-effective," it does not mean that the strategy saves money, but that the strategy is a good value.

POSSIBLE CAUSES FOR VARIATIONS IN THE PACE OF LITIGATION

The information on dispositions by judge provided to the NCSC shows considerable variation in the number of disposed cases. A number of possible reasons are listed below. One factor stands out, however, because there is a correlation between variation in case processing time and the occurrence of judge rotation between divisions. It should be noted that rotation of judges is mandated by Wisconsin circuit court rules, whereby service in a division is limited to one, four-year term.

Generally, it appears that most judges who were transferred into a different case type were disposing cases more slowly than the judges who were handling the same case type during the previous year, with a few noted exceptions.

Civil Division Judicial Rotation

Two of the twelve judges in the Civil Division were newly assigned in 2005/2006. One of the newly assigned judges hears small claims, a specialized high volume court with many self represented litigants. Of the remaining civil judges, the other newly assigned judge disposes cases more slowly than all but one judge. This could be attributed to the judge's rotation from felony criminal law to civil law.

Family Division Judicial Rotation

Two of the five Family judges were newly assigned in 2005/2006. Family cases fit the premise exactly. The two "new" judges are processing cases slower than the judges who were processing Family cases in 2004/2005, followed by the Presiding Judge. Both judges were transferred from criminal courts.

Felony Division Judicial Rotation

Four of the ten Felony judges were newly assigned in 2005/2006. Three of the four newly assigned judges process cases more slowly; more importantly, however, they are all processing drug cases which generally entails more services and more involved terms and conditions for the defendant before a case can be disposed. Additionally, they are all disposing cases at a faster rate than the judges previously handling drug-related dockets in 2004/2005. One of the newly assigned judges also handles a specialized ("gun") docket which is not comparable to the other judges handling general felony cases.

Therefore, it is very difficult to draw any conclusions regarding the pace of litigation in the Felony Division.

Misdemeanor/Traffic Division Judicial Rotation

Four of the ten judges were newly transferred in 2005/2006.. One judge was assigned a special docket for Operating After Revocation (OAR) which makes comparison with other misdemeanor/traffic judges inconclusive; however, it was pointed out that this particular judge disposed significantly more cases than his predecessor. According to the newly transferred judge, his higher productivity was due to his different judicial approach regarding the court's role in OAR cases.

The three remaining newly transferred judges are disposing cases slower than the "existing" misdemeanor/traffic judges but fairly consistent with the presiding judge. One may surmise that the presiding judge's lower rate of dispositions is due to his additional administrative duties.

Children's Division Judicial Rotation

One judge was rotated to the Children's Court during 2005/2006. That judge handles TPR cases along with the presiding judge of the Children's Court. Once more, one may conclude that the newly rotated judge disposes more cases than the presiding judge because administrative duties may contribute to the presiding judge's lower rate of case resolution.

Other Factors that Affect Rate of Case Disposition

In addition to the general trend that "new" judges are disposing cases at a slower rate than incumbent judges in a division, other factors play a role in each judge's pace of litigation. Any of the items listed below, singly or in combination with other factors, will affect the number and rate of dispositions that a judge can effectuate in any given year. They include the following:

- Rotation – some judges may have been in a division for a partial rather than a full year
- Number of jury vs. bench trials handled – jury trials are more time-consuming than bench (non-jury) trials
- Experience – some judges may have more experience in a given case type that allows disposing of cases more adeptly
- Vacation taken – some judges in a given year may take more or less vacation than others
- Scheduling practices – practice varies in how many cases deep a judge stacks trials (based on the probability that most will settle or plead before trial), whether a judge uses a scheduling order, a judge's continuance policy
- Individual preferences and "judicial style" – some judges talk slower or faster, some judges force settlements or trials in the interests of justice
- Meaningful pretrial discovery enforced by the court that induce parties to prepare for trial
- More pro se unrepresented litigants that require more explanation or protection of rights

- The amount of case-related administration a judges feels is needed to handle or decide a case, such as mental competency of a defendant
- Insufficient law clerk support to perform the legal research they need to make rulings
- Charging practices of the prosecutors in a given courtroom and the willingness of prosecutors to plea bargain
- The experience and willingness of public defenders in a given courtroom to try or settle cases
- Production orders – whether in-custody defendants are delivered on time for their court proceedings
- Available hours the judge has to handle cases – administrative duties
- Support staff resources and utilization – availability of the clerk, bailiff, and court reporter. Is court halted due to the need for copies, security emergency, etc.?

Conclusions about Variation in Pace of Litigation

The above list is not all-inclusive but the items are all factors in determining the pace of litigation. All of the possible factors which are within control of the judge are legitimate exercise of judicial discretion.

The causes of variation in the number of dispositions per judge are difficult to pinpoint. Examination of disposition rates leads to a general conclusion that judges new to a division assignment may be more deliberate as they hear cases than are judges who have handled cases in that division for more than one year. The NCSC does not advocate NOT rotating judicial assignments. On the contrary, rotation is a widely-used technique (and required in Wisconsin by court rule) that is generally considered to keep the bench invigorated and can help to prevent judicial burn-out. The slower pace may just be an unfortunate consequence of the rotation process.